CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 87/PUU-XXI/2023

Concerning

Connexity in Criminal Acts of Corruption

Petitioner	:	**Gugum Ridho Putra**
Type of Case	:	Judicial Review of Law Number 30 of 2002 on the Corruption Eradication Commission (Law 30/2002); Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP); and Law Number 31 of 1997 on Military Courts (Law 31/1997) against the 1945 Constitution of the Republic of Indonesia
Subject Matter	:	Article 26 paragraph (4) and Article 42 of Law 30/2002; Article 89 paragraph (1), Article 89 paragraph (2), Article 89 paragraph (3), Article 90 paragraph (1), Article 90 paragraph (3), Article 91 paragraph (1), Article 91 paragraph (2), Article 91 paragraph (3), Article 92 paragraph (1), Article 93 paragraph (1), Article 93 paragraph (2), Article 93 paragraph (3), and Article 94 paragraph (5) of the KUHAP; and Article 198 paragraph (1), Article 198 paragraph (2), Article 198 paragraph (3), Article 199 paragraph (1), Article 199 paragraph (3), Article 200 paragraph (1), Article 200 paragraph (2), Article 200 paragraph (3), Article 201 paragraph (1), Article 202 paragraph (1), Article 202 paragraph (2), Article 202 paragraph (3), and Article 203 paragraph (5) of Law 31/1997, alleged to be inconsistent with the principle of legal certainty guaranteed in Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	1. To grant the Petitioner's petition in part; 2. To declare that Article 42 of Law Number 30 of 2002 on the Corruption Eradication Commission (State Gazette of the Republic of Indonesia Year 2002 Number 137, Supplement to the State Gazette of the Republic of Indonesia Number 4250), which states that "The

Corruption Eradication Commission shall have the authority to coordinate and supervise the investigation, prosecution, and indictment of corruption offences committed jointly by persons subject to military courts and to general courts," is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, subject to the condition that it must be understood to mean: "The Corruption Eradication Commission shall have the authority to coordinate and supervise the investigation, prosecution, and indictment of corruption offences committed jointly by persons subject to military courts and to general courts, insofar as the law-enforcement process in the case concerned is handled from the outset or initiated/discovered by the Corruption Eradication Commission;"

3. To order that this decision be duly published in the State Gazette of the Republic of Indonesia;

4. To reject the remainder of the Petitioner's petition for all other and further claims.

Date of Decision : Friday, November 29, 2024

Overview of Decision :

The Petitioner in this case is an individual Indonesian citizen, an active taxpayer, who works as an advocate and considers himself entitled to benefit from development in various sectors financed by the State Budget (APBN), one of whose sources is the taxes he pays. In his view, the provisions he challenges create doubt within the Corruption Eradication Commission (KPK) about pursuing "connexity" corruption cases, which may cause such cases—present and future—to fail or at least not be handled optimally.

Regarding the Constitutional Court's jurisdiction, because the petition concerns a constitutional review of statutory norms—namely Article 26 paragraph (4) and Article 42 of Law 30/2002; Article 89 paragraph (1), Article 89 paragraph (2), Article 89 paragraph (3), Article 90 paragraph (1), Article 90 paragraph (3), Article 91 paragraph (1), Article 91 paragraph (2), Article 91 paragraph (3), Article 92 paragraph (1), Article 93 paragraph (1), Article 93 paragraph (2), Article 93 paragraph (3), and Article 94 paragraph (5) of KUHAP; and Article 198 paragraph (1), Article 198 paragraph (2), Article 198 paragraph (3), Article 199 paragraph (1), Article 199 paragraph (3), Article 200 paragraph (1), Article 200 paragraph (2), Article 200 paragraph (3), Article 201 paragraph (1), Article 202 paragraph (1), Article 202 paragraph (2), Article 202 paragraph (3), and Article 203 paragraph (5) of Law 31/1997—against Article 28D paragraph (1) of the 1945 Constitution, the Court had the authority to adjudicate the petition *a quo*.

On legal standing, the Court found that the Petitioner had explained his constitutional rights and the alleged harm caused by the application of the challenged provisions. The alleged harm is specific and actual, said to arise from the legal uncertainty in handling connexity corruption cases created by these norms, and this harm has a causal link (*causal verband*) to their application. Therefore, if the petition is granted, such harm is expected to disappear because legal certainty in connexity cases would be ensured and corruption handling would become more effective.

Beyond that, the Court noted that, as a member of the public, the Petitioner has a participatory role in preventing and eradicating corruption, as reflected in Article 41 of Law Number 31 of 1999 on the Eradication of Corruption (Law 31/1999). Therefore, regardless of whether the alleged unconstitutionality is ultimately proven, the Court held that the Petitioner had legal standing to act as petitioner in this case.

According to the Petitioner, Article 42 of Law 30/2002 is unclear as to whether, when the KPK exercises its authority to investigate, prosecute, and indict "connexity" corruption cases, it may apply the special criminal procedure rules on connexity in the Criminal Procedure Code and the Military Court Law. The Petitioner also argued that, as a specialized anti-corruption body, the KPK should be given a dominant position comparable to that of the Attorney General's Office in deciding disputes with the Deputy Attorney General for Military Criminal Affairs over how such connexity cases are handled.

The Court noted that the handling of connexity corruption cases is influenced not only by the substance of the law, but also by other factors affecting implementation. Comprehensive and systemic anti-corruption efforts require three elements known in legal-system theory: legal structure/institutions, legal substance, and legal culture.

In terms of legal substance needed to improve the effectiveness of anti-corruption efforts, the Court recalls the commitment and seriousness required from all stakeholders to refine and improve the legislation needed to implement People's Consultative Assembly (MPR) Decree Number XI/MPR/1998 on a State Administration that is Clean and Free from Corruption, Collusion, and Nepotism (TAP MPR No. XI/MPR/1998) as well as Law Number 28 of 1999 on State Administration that is Clean and Free from Corruption, Collusion, and Nepotism (Law 28/1999).

As an implementation of that Decree and Law 28/1999, the legislature enacted a new anti-corruption law to replace Law Number 3 of 1971 (Law 3/1971), which was considered outdated to meet the needs of eradication of criminal acts of corruption at the time, namely Law 31/1999 as amended by Law 20/2001.

Although since the Reform era corruption has been categorized as an extraordinary and serious crime, its prosecution has continued to rely on the Criminal Procedure Code, which long predates the Reform period. When the KPK was established under Law 30/2002 as a specialized anti-corruption body, its powers of investigation, prosecution, and indictment were still grounded in the Criminal Procedure Code [vide Article 38 paragraph (1) of Law 30/2002], except where specifically regulated in Law 19/2019 in conjunction with Law 30/2002.

Within this framework, the KPK was granted special powers not held by the two existing anti-corruption law-enforcement bodies—the National Police and the Attorney General's Office—including the power to coordinate and supervise investigations, prosecutions, and indictments in corruption cases committed jointly by persons subject to two different court systems, namely the military courts and the general courts [vide Article 42 of Law 30/2002], as well as to coordinate and supervise the agencies authorized to combat corruption, namely the National Police and the Attorney General's Office [vide Article 6 of Law 19/2019 in conjunction with Law 30/2002]. However, neither Law 30/2002 nor Law 19/2019 further regulates how this "special" authority of the KPK is to be exercised in coordinating and controlling corruption cases where the perpetrators/subjects of law act jointly and fall under two different jurisdictions, in this instance the general courts and the military courts.

In the Court's analysis, the Criminal Procedure Code sets out the procedural rules that law-enforcement bodies must follow when a criminal case involves perpetrators subject to both

the general courts and the military courts, regulated in Articles 89 to 94 under the chapter on "connexity." These provisions, however, are addressed to police investigators and certain civil-service investigators, public prosecutors, as well as military police and military prosecutors, and do not expressly designate KPK investigators and prosecutors as addressees for connexity cases that the KPK coordinates and controls under Article 42 of Law 30/2002. This absence is understandable because the KPK was established after the Criminal Procedure Code had come into force and the Criminal Procedure Code has never been amended to accommodate the KPK's coordinating and controlling role in corruption cases with connexity elements.

Law 34/2004 on the Indonesian National Armed Forces (Law 34/2004) provides the basic policy that "Soldiers are subject to the authority of military courts for military crimes and to the authority of general courts for ordinary crimes, which is regulated under statutory legislation" as stated in Article 65 paragraph (2). This is consistent with the MPR Decree Number VII/MPR/2000 on the separation of the National Armed Forces and the National Police (TAP MPR No. VII/MPR/2000). Yet, under Article 74 of Law 34/2004, this arrangement is only fully effective once a new military-court law is enacted, so until such a law exists, members of the National Armed Forces remain subject to Law 31/1997 on Military Courts.

From the perspective of legal structure, the Court considered that anti-corruption enforcement institutions are complete: the police, the prosecution service, and the KPK, as well as investigators and prosecutors in the military-justice system who handle offences committed by members of the National Armed Forces. Even so, coordination and cooperation among these institutions must function properly and set aside sectoral ego. This must be affirmed by the Court since, factually, legislation on certain civil-service (ASN) posts allows them to be filled by members of the National Armed Forces or Police personnel [vide Article 19 paragraph (2) of Law Number 20 of 2023 on State Civil Apparatus (Law 20/2023). Nevertheless, those who take up civilian posts should, in principle, relinquish their military or police status except for positions expressly exempted in Law Number 34 of 2004 on the Indonesian National Armed Forces, Law Number 2 of 2002 on the National Police of the Republic of Indonesia, and Law 20/2023. However, in exercising their duties in those civilian posts, members of the National Armed Forces must then be subject to the civil-law regime.

After carefully examining the parties' explanations and the facts revealed at trial, the Court concluded that the core problem in connexity corruption cases stems from divergent interpretations among law-enforcement agencies of Article 42 of Law 30/2002. Properly understood in grammatical, teleological, and systematic/logical terms, that article should leave no doubt that the KPK has the authority to coordinate and control investigations, prosecutions, and indictments in corruption cases involving both general-court and military-court defendants.

In terms of legal culture, the issue is not only compliance with anti-corruption norms but also the extent to which law-enforcement officers themselves comply with procedural rules in practice. Enforcement of anti-corruption law must set aside feelings of reluctance or "*ewuh pakewuh*," especially concerning matters clearly regulated by statute, and although the KPK—which was established after the Reform era—is newer than the Police, Prosecution, and the Armed Forces, Article 42 of Law 30/2002 expressly places the KPK in a supervisory and controlling role in investigations, prosecutions, and indictments in corruption cases involving both general-court and military-court defendants—described as a "super body"—that may, in certain circumstances, take over investigation, prosecution, and indictment from other institutions [vide General Provisions of Law 30/2002].

Considering the substance, structure, and legal culture, the Court found it necessary to clarify Article 42 of Law 30/2002 for the sake of legal certainty. The provision must be understood to give the KPK authority to investigate, prosecute, and indict corruption cases, so long as the

case is discovered or initiated by the KPK. In such situations, where a corruption offence is jointly committed by persons subject to the general courts and the military courts, and the KPK has handled the case from the outset, the case remains with the KPK until a final and binding court decision is reached. Conversely, for cases involving military-court defendants that are discovered and initially handled by institutions other than the KPK, those institutions are not required to transfer the case to the KPK.

On this interpretation, Article 42 of Law 30/2002 contains no hidden condition that diminishes the KPK's authority over joint corruption cases involving general-court and military-court defendants, as long as the enforcement process begins with the KPK. There is therefore no obligation for the KPK to hand such cases over to the military prosecutors or the military courts.

The Court also held that in relation to the Petitioner's argument of other articles petitioned for review, Article 42 of Law 30/2002 does not obstruct the application of procedural laws on connexity in the Criminal Procedure Code or otherwise disturb the validity of the other provisions the Petitioner challenged, because Article 42 regulates the KPK's authority to coordinate and control, not to negate those general procedural norms.

The Court applies the *lex specialis derogat lex generalis* principle, under which Law 30/2002, as the more specific statute on corruption offences, should prevail as the primary legal basis and reference for handling corruption cases. This clarification is intended to remove any remaining doubt within the KPK about exercising its authority in corruption cases jointly involving defendants subject to military and general courts under Article 42 of Law 30/2002, provided that the case is initiated or first discovered and handled by the KPK.

Because the Court has clarified that Article 42 of Law 30/2002 must be understood as granting the KPK authority to investigate, prosecute, and indict such corruption cases so long as the enforcement process begins with the KPK, it considers it unnecessary to assess the constitutionality of the other the Criminal Procedure Code and Military Court provisions challenged by the Petitioner, that is, Article 89 paragraph (1), Article 89 paragraph (2), Article 89 paragraph (3), Article 90 paragraph (1), Article 90 paragraph (3), Article 91 paragraph (1), Article 91 paragraph (2), Article 91 paragraph (3), Article 92 paragraph (1), Article 93 paragraph (1), Article 93 paragraph (2), Article 93 paragraph (3), and Article 94 paragraph (5) of the Criminal Procedure Code; and Article 198 paragraph (1), Article 198 paragraph (2), Article 198 paragraph (3), Article 199 paragraph (1), Article 199 paragraph (3), Article 200 paragraph (1), Article 200 paragraph (2), Article 200 paragraph (3), Article 201 paragraph (1), Article 202 paragraph (1), Article 202 paragraph (2), Article 202 paragraph (3), and Article 203 paragraph (5) of Law 31/1997. Their validity simply adjusts to this decision. The Court also found that the Petitioner's request to interpret Article 26 paragraph (4) of Law 30/2002 as requiring the creation of a special sub-unit under the KPK's Enforcement Division for connexity corruption is not essential—tasked with the investigation, prosecution, and indictment of connexity corruption crimes—since the KPK can already exercise its authority under Article 42. However, if such an organizational change is later deemed necessary, it is a matter of legislative policy, taking into account the KPK's needs in exercising its duties and authority. Therefore, it is important that the Court stresses that the legislature should promptly amend the Criminal Procedure Code, the KPK Law, and the Military Court Law.

Based on all of the aforementioned legal considerations, the Court concluded that Article 42 of Law 30/2002 has indeed led to legal uncertainty as alleged by the Petitioner, but because the Court's interpretive solution differs from the exact wording proposed in the petition, the claim is only partially well-founded.

By contrast, Article 26 paragraph (4) of Law 30/2002; Article 89 paragraph (1), Article 89 paragraph (2), Article 89 paragraph (3), Article 90 paragraph (1), Article 90 paragraph (3), Article 91 paragraph (1), Article 91 paragraph (2), Article 91 paragraph (3), Article 92 paragraph (1), Article 93 paragraph (1), Article 93 paragraph (2), Article 93 paragraph (3), and Article 94 paragraph (5) of the Criminal Procedure Code; and Article 198 paragraph (1), Article 198 paragraph (2), Article 198 paragraph (3), Article 199 paragraph (1), Article 199 paragraph (3), Article 200 paragraph (1), Article 200 paragraph (2), Article 200 paragraph (3), Article 201 paragraph (1), Article 202 paragraph (1), Article 202 paragraph (2), Article 202 paragraph (3), and Article 203 paragraph (5) of Law 31/1997 do not in fact create the alleged legal uncertainty under Article 28D paragraph (1) of the 1945 Constitution. As such, the petition in relation to those provisions is not legally well-founded.

Accordingly, the Court handed down a decision with the verdict as follows:

1. It grants the Petitioner's petition in part;
2. It declares that Article 42 of Law Number 30 of 2002 on the Corruption Eradication Commission (State Gazette of the Republic of Indonesia Year 2002 Number 137, Supplement to the State Gazette of the Republic of Indonesia Number 4250), which states that "The Corruption Eradication Commission shall have the authority to coordinate and supervise the investigation, prosecution, and indictment of corruption offences committed jointly by persons subject to military courts and to general courts," is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, subject to the condition that it must be understood to mean: "The Corruption Eradication Commission shall have the authority to coordinate and supervise the investigation, prosecution, and indictment of corruption offences committed jointly by persons subject to military courts and to general courts, insofar as the law-enforcement process in the case concerned is handled from the outset or initiated/discovered by the Corruption Eradication Commission;"
3. It orders that the decision be duly published in the State Gazette of the Republic of Indonesia;
4. It rejects the remainder of the Petitioner's petition for all other and further claims.