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by Satria Unggul

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Accountability of Military Members as Perpetrators of Corruption in Defense Equipment Procurement

40 wi Rahayu¹, Satria Unggul Wicaksana Prakasa²

¹ Fakultas Hukum Universitas Muhammadiyah Surabaya, Indonesia

² Fakultas Hukum Universitas Muhammadiyah Surabaya, Indonesia

ABSTRACT

Corruption courts are the only judiciary that takes sides in examining, adjudicating, and deciding corruption cases in Indonesia. However, in fact, in handling cases of corruption crimes committed by members of the military, those who have the right to prosecute are military officials and those who can carry out investigations are prosecutors in the military environment. Therefore, this study aims to find out how the role of the Military Court in handling corruption cases in the defense equipment procurement sector. The legal question posed is ; 1.) What is the Criminal Liability of Military Members Who Commit Corruption In The Procurement of Defense Equipment?, and 2.) What are the legal mechanisms that can be carried out in the enforcement of corruption in the procurement of defense equipment? This research uses socio-legal methods. The results of this study argue that 1.) Legal liability for members of the military who commit criminal acts remains in the race against Law No. 31 of 1997 as amended by Law No. 20 of 2001. 2.) There needs to be transparency from defense equipment procurement data so that it can facilitate monitoring or supervision related to goods and services.

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INTRODUCTION

Corruption is one of the special criminal acts that has specifications both regarding formal (Event) and Material (Substance) criminal laws. In its classification, this criminal act is categorized as a transnational crime because it is committed on a large scale and its effect is not only detrimental to the state's finances but can also deprive the social and economic rights of the wider community. Based on data from research by Indonesia Corruption Watch (ICW), activities that are very prone to corruption are the procurement sector of goods and services, because it is still weak and lacks supervision from government agencies. One of them is in the procurement of TNI defense equipment which until now has not received more attention, even though the procurement can be one of the factors in the occurrence of corruption cases because the budget given is very large. According to ICW data from 2016 to 2020, there were 49.1 with a total of 1,093 cases handled by legal experts related to PBJ and the amount of loss reached Rp 5.3 trillion¹.

¹ Alamsyah, Wana. 2021. "Fact Sheet : Pengelolaan Dan Pemanfaatan Data Sanksi Daftar Hitam Oleh Masyarakat Sipil." ICW.

Referring to the state budget data of the Ministry of Finance, the funds provided by the Ministry of Defense received an allocation of rp.9.3 which was allocated for the procurement of defense equipment (the main tool of the weapon system) of the TNI. The budget is divided into (TNI AL IDR 3.75 trillion, TNI AD IDR 2.65 trillion, TNI AU IDR 1.19 trillion, and others IDR 1.71 trillion². From this data, it can give rise to a larger case of corruption crimes. Moreover, in this case, law enforcement to members of the TNI who commit Corruption Crimes is considered weak and difficult to eradicate because military members are subject to the military criminal code (KUHPM) and who have the right to investigate suspected corruption cases can only be carried out by military members.

The judiciary should be an impartial and independent institution, this is regulated in Law No. 46 of 2009. Beside that, in reality the Military Courts are closed and not transparent. This is evidenced in the prosecution of the Corruption Act case, which in the investigation of the case can only be carried out by the auditor (Investigator from the military environment). From the data obtained, the most difficult case to investigate is the procurement of the main equipment of the weapon system (defense equipment). Because data related to the process of purchasing defense equipment every year is kept confidential, both data on the number and type of goods purchased. This condition causes many chance for officials to carry out corrupt practices³.

Therefore, it is necessary to have regulations related to impartiality and openness in military courts, so that indications of alleged corruption can be immediately investigated so that the state can reduce the level of spread of corruption cases. As happened to the typical purchase of Heli AW101 involving 4 Military Members with allegations of Corruption Crimes that harmed state finances up to 220 M. In this case, the heli buying and selling transaction process was carried out in 2016 but the findings of indications of alleged corruption were only revealed in 2017 by the KPK and the TNI Commander and the investigation process began to be carried out in 2018.

This proves that the supervision of the use of the goods and services budget in the TNI defense equipment procurement sector is still very weak. In the case of corruption crimes, the problem that often occurs is the return of financial losses suffered by the state, because as we know the state can only save 10-15% of the total money corrupted⁴.

In the study Jeremy Emmanuel⁵, previously explained how the TNI's coverage policy was seen from the subject of corruption crimes and the sanctions that can be imposed and analyzed the decision No: 363K / MIL / 2017 concerning the Application

² dya, Tika. 2021. "Terus Naik, Segini Anggaran TNI Dalam 4 Tahun Terakhir." sindonews.com.

³ Tiku, Imanuel Arung. 2020. "Kajian Yuridis Terhadap Tindak Pidana Korupsi Yang Di Lakukan Oleh Pejabat Tni." *LEX CRIMEN* 9(2): 78.

⁴ Tri Novita Sari Manihuruk, M Yusuf Daeng. 2021. "Pelaksanaan Eksekusi Uang Pengganti Terpidana Tindak Pidana Korupsi Oleh Kejaksaan Negeri Pekanbaru." *Justitia Jurnal Hukum* 5(2): 219.

⁵ Jeremy Emmanuel*, Nyoman Serikat Putra Jaya, Umi Rozah. 2019. "Kebijakan Pertanggungjawaban Pidana Anggota Tni Dalam Tindak Pidana Korupsi (Studi Kasus Putusan Nomor 363 K/MIL/2017)." *Diponegoro Law Journal* 8(3).

of TNI Criminal Responsibility in Corruption Crimes⁴⁸ from this research, it was concluded that the Military Justice Law was considered no longer in accordance with the development of legal needs, especially in preventing and eradicating corruption, so it was necessary to add several provisions in the Military Law itself.

Meanwhile, the research explained the juridical study of corruption crimes carried out by TNI officials. From the conclusion of this paper, it is argued that in the process of examining and investigating corruption cases by TNI officials together with civilians, the KPK should have the authority²¹ to participate in conducting investigations even though it is limited, this is in accordance with the²⁰ provisions contained in article 42 of Law No. 30 of 2002 concerning the KPK. Based on the explanation from the above background, this research was conducted to;²

- 1) analyze how legal liability imposed on a member of the Military who is found to have committed a criminal act of corruption
- 2) Whether the mechanisms in the Military Justice system have worked well or there must still be regulations in improving or adding regulations.

METHODS⁶

The method used in this research is Sociolegal by using the approach of legal science and social sciences. Basically, sociolegal research not only looks at the law in terms of norms, but also views the law complexly both from a historical and community point of view in order to measure the effectiveness of an applicable legal regulation / norm⁶.

The importance of using this method to examine the problem of Corruption Crimes that occur in the Military environment which is not only seen from the legal aspect but from various other aspects such as social aspects. In this study, the approach used is a conceptual and historical approach, by analyzing the factors causing typical events that occur in the military environment and analyzing the mechanism of accountability to military members in accordance with legal sources, previous⁴⁵ theories and applicable norms.

The legal materials used in this study used legislation which include³ the Military Law Book (KUHPM), Law No. 31 of 1997 concerning Military Justice, Law No. 31 of 1999 concerning Corruption Crimes, the Criminal Code (KUHP). Meanwhile, non-legal materials use literacy studies from previous journal writings. As for the analysis of authorship data, it is carried out in a descriptive-qualitative manner.

DISCUSSION AND RESULT

Criminal Responsibility of Military Members Who Commit Defense Equipment Typos

A. PBJ (Pengguna Barang dan Jasa) Corruption Theory

Corruption is one of the crimes of extrajudicial crime which from these actions can have a very big impact on the sustainability of the country's economy. One of the sectors that has a big impact on corruption is the procurement of goods and services

⁶ Kornelius Benuf, Muhamad Azhar. 2020. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Jurnal Gema Keadilan* 7: 29-30.

(PBJ). To find out the factors causing corruption, the author races from 3 theories that have been cited by previous authors :

The theory of anonymity proposed by Emile Durkheim, who has been cited states that the modernization that occurs in a society, can have an impact on the decline of general norms such as religious norms, laws, and so on. In this case, if it continues to be allowed, there will be an anonymous condition that causes corruption to become more rampant and uncontrollable⁷. According to Emile Durkheim himself, crime is a despicable act which has been agreed upon by society as an act that should not be done.

The main factor that can be the cause of the occurrence of this TIPIKOR is the mahdzab / sociological school which states that the main factor for the occurrence of crime is due to social factors. Emile Durkheim himself emphasized that "normlessness, lessens social control" which means that the weakening of supervision and social control can affect changes in norms so that it can trigger conflicts of norms in a relationship that can trigger crime⁸.

According to this theory, the efforts that can be made to suppress the occurrence of TIPIKOR are to make preventive efforts (non-penal / prevention countermeasures) and Repressive Efforts (strict enforcement of sanctions)⁹.

Meanwhile, according to Jack Bologne, the theory (Gone) is considered appropriate in answering the reasons for the fraud factor from the criminal act of corruption. In this theory, there are 4 important factors that cause cheating to occur, namely (G = O = N = E).

Greedy, where in this factor a sense of greed and gluttony are the main potential in triggering cheating. This natural trait will arise in humans, depending on how each individual controls these vices. **Opportunity**, this is related to a policy or system from an organization / agency that still has chance to commit fraud. for example, the lack of strict supervision regarding the implementation of the PBJ budget from an institution, so that the loophole can be used to commit fraud/ corruption. This is also corroborated from several studies from previous authors who stated that the main objector of cheating is a weak / bad internal control system, thus triggering fraud. **Needs**, this is one of the instincts possessed by humans, where there is an attitude of never feeling satisfied / enough, and consumerism so that this attitude can trigger someone to get more in a bad way or cheat. In addition, urgency/encouragement by several factors can also trigger cheating¹⁰. **Exposure**, this refers to the fact that law enforcement for someone who commits corruption is still felt to be less assertive so as not to create a sense of deterrence for the perpetrators. This is what causes the level of corruption to increase every year. In his research, he

⁷ Indahni, A., Cassanti, R., & uliarta Manalu, R. M. (2022). Memperdagangkan Alibi dalam Perkara Keterlibatan Korupsi Menggunakan Teori Anomie dari Emile Durkheim. *Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya (HUMAYA)*, 2(1), 21-33.

⁸ Umar. 2012. "Tindak Pidana Korupsi dalam Tinjauan Kriminologi dan Yuridis (Perspektif Hukum Islam)." : 41.

⁹ Endrawati. 2017. "Analisis Terhadap Tindak Pidana Korupsi Penyalahgunaan Wewenang Dalam Jabatan Pemerintahan." *Morality : Jurnal Ilmu Hukum* 3(2): 79-85.

¹⁰ Julianti Naya, and harti Budi Yanti. 2020. "Mendeteksi Kecurangan Melalui Teori Gone Menurut Persepsi Auditor Eksternal Dengan Pengalaman Kerja Sebagai Variabel Moderasi."

stated that the appropriate factor, in causing fraud, is expose who⁴⁹ the punishment given by the bureaucracy in dealing with the perpetrators of fraud in the procurement of goods and services still does not have a deterrent effect. So there are still many who cheat.

In addition, from the writing Amiruddin¹¹ it is stated that there is a need for repressive action for the perpetrators of corruption crimes and the most suitable strategy in minimizing the level of corruption is to apply punishment as a last resort (ultimum remedium). In criminal law itself, it is known as the theory of the purpose of punishment, namely:

Absolute Theory or Retribution, In this theory adheres to the understanding that all sorts of forms of evil must get the appropriate punishment. Just as a person commits a criminal act of corruption, that person must be punished, "quia peccatum" because the act is considered a sin to be accounted for. **Relative Theory**, This theory refers that sanctioning is considered an attempt to prevent the occurrence of a crime, because it is considered to have a deterrent effect. However, this theory is not effective because there are still many criminals who still commit crimes even though the sanctions are classified as severe to the death penalty, such as corruption cases. **Combined Theory**, Theory is a way of thinking that criminals must be carried out on the purpose of retaliation and maintaining the order of society, which in its implementation is carried out in a combined manner by emphasizing on one of the elements without eliminating the other element.

If it races against the principle of ultimum remedium, then it can be concluded that its elimination of corruption with criminal sanction² is considered ineffective. As a reflection that can be seen in article 2 paragraph (2) of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001, it is expressly explained that in that article provides a ballast penalty, namely the death penalty for convicts who have committed TIPIKOR when the state is in a precarious state. However, in reality it does not cause a deterrent effect and until now there are still many cases of TIPIKOR that occur in Indonesia.

B. The²⁷ of Legal Responsibility of Military Members in the PBJ

The Procurement system of goods and services should be able to apply the principles of a good and clean governance system (Good Governance and Clean Governance), efficiency, effectiveness, transparency, accountability, and accountability as stipulated in Law No. 14 of 2008. However, in reality, in managing goods and services, there are still many misappropriations – misappropriations and power holders, so that the governance system cannot run with a balance, what is the impact of the misappropriation can harm the state's finances¹².

In terms of several aspects that explain the factors that cause misappropriation/corruption, it can be seen from several theories, as follows

Anomie theory, this theory is more towards social factors as the main factor

¹¹ Amiruddin, Amiruddin. 2012. "Analisis Pola Pemberantasan Korupsi Dalam Pengadaan Barang/Jasa Pemerintah." *Jurnal Kriminologi Indonesia* 8(1): hlm. 33. ²⁹

¹² Candra Nur Hidayat, ¹⁸ 20). 'Efektivitas Hukum Sistem E-Procurement Dalam Pengadaan Barang Dan Jasa Secara Elektronik', *Pamulang Law Review*, 2.1, 37 <<https://doi.org/10.32493/palrev.v2i1.5335>>.

in the occurrence of an act of crime, including TIPIKOR. In this theory, it is assumed that the norm is very important for life, because with the loss of the balance of norms, it can trigger many crimes that will occur.

Responsibility of Military Law²⁸ which refers to the theory of anomie, there are 2 actions that can be taken to suppress the occurrence of TIPIKOR in the procurement of Goods and Services in the defense equipment sector, namely;

1. Preventive Measures In this case, it is necessary to build good morals for each soldier and there needs to be supervision in the management of the budget so that there is no misappropriation of the power that has been given.
2. Repressive Actions For a military soldier who is¹⁵ trying out TIPIKOR defense equipment, it can be subject to strict sanski in accordance with the rules contained in the Criminal Code and race to Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes¹⁴

Meanwhile, according to the GONE theory, efforts that can be made to reduce the number of corruption in the defense equipment procurement sector are to provide guidance to military soldiers in increasing devotion in life and instilling pancasila values in carrying out every task and all their daily activities.

C. Kompetensi Penegak Hukum

KPK's Authority in Handling TIPIKOR Cases⁷

The KPK is one of the state institutions that in carrying out its duties and authorities is independent (free from any influence), and is considered a superbody institution because it has special authority in cracking down on TIPIKOR¹³. The duties and authorities of the KPK based on articles 6 and 7 of Law No. 30 of 2022 are broadly divided into 4 parts, namely¹⁴:

1. Enforcement, the purpose of this section is to provide a deterrent effect on TYPIST actors and in⁴⁴ is enforcement is expected to be able to provide transparency, and can restore state financial losses due to corruption.
2. Prevention, in this case, it is hoped that the KPK will be able to increase supervision of state budget management, to suppress the occurrence of TIPIKOR.
3. Coordination and Supervision, in this case, the KPK cooperates with authorized institutions to conduct investigations, investigations, and prosecutions such as the police, prosecutors, and other related institutions, in order to streamline their duties in carrying out the eradication of TIPIKOR.
4. Monitoring, in this section, the KPK is tasked with carrying out its function as a supervisor to monitor all government agencies / agencies for budget realization.

However, in its implementation, the KPK is limited in article 11 of Law No. 30

¹³ Nugraha, M N A. 2022. "Penegakan Hukum Tindak Pidana Korupsi Pengadaan Alusista Ditinjau Dari UU No. 31 Tahun 1999 Jo UU No. 20 Tahun 2001³⁷ Tindak Pidana Korupsi." *Bandung Conference Series: Law Studies* 2(1): 607-14. <https://proceedings.unisba.ac.id/index.php/BCSLs/article/view/1056>.

¹⁴ Paongan, Rangga Trianggara. 2013. "Kewenangan Penuntutan Komisi Pemberantasan Korupsi Dan Kejaksanaan Dalam Penanganan Tindak Pidana Korupsi Di Indonesia." *Lex Crimen* 93(1): 21-36.

of 2022 which states that the KPK can only conduct investigations, investigations, and prosecutions for TIPIKOR cases whose losses are at least Rp. 1,000,000,000.00 (one billion rupiah). In addition, it has also been affirmed in Law No. 7 of 2006 which has ratified the regulation of the UN Convention against corpsi which states that "The basic principles of the punitive system require steps that can establish an appropriate procurement system based on transparency, competition and objective criteria in making an effective decision to prevent corruption." (UNCAC) Article 9 (1). Public procurement and management of public finances)

In the case of Tipikor which occurred in the military environment, the power/authority possessed by the KPK is still unclear because there is no clear mandate/regulation regarding its authority in following up on TIPIKOR cases that occur within the military. (Indrayana, 2016) However, for TIPIKOR cases carried out by members of the military and civilians, a connection mechanism can be applied that can be handled by the KPK and the Military. As stipulated in article 42 of the KPK Law which states that the KPK can take part in coordinating and controlling investigations, investigations, and prosecutions in connection cases.

However, when carrying out this process, of course, it depends on the commitment or decision of each KPK leader, TNI Commander, and Chief Justice to create a connection team¹⁵. Therefore, there must be a strong synergy between institutions from both the KPK and the TNI to both carry out supervision and enforcement to combat corruption that occurs in the military environment.

¹⁶ **The Authority of the Prosecutor's Office in Handling Typist Cases**

The Prosecutor's Office is a government institution that has the right to prosecute and other authorities in accordance with the regulations of the Law, this is regulated in Law No. 16 of 2004. In article 30 points a and d of Law No. 16 of 2004, it is clearly stated that the prosecutor's office can carry out prosecutions and can conduct investigations into certain criminal acts based on the Law.¹⁶ Investigation is one of the basic stages in a series of examination processes to fight for law enforcement. Therefore, this process is one of the basic keys in uncovering the events that occur. so in this case, the role of the prosecutor as an investigator is very important to help the process of disclosing crimes including corruption crimes that are considered to need extra treatment. In an investigation of the TIPIKOR case carried out by the prosecutor/police, it is mandatory to coordinate with the KPK as stipulated in article 50 of Law No. 30 of 2002. This proves that the prosecutor's office has the same authority to carry out the investigation process in the Tipikor case.¹⁷

¹⁵Yuntho, Emerson. 2021. "Data Penindakan Korupsi Di Indonesia 2021." ICW: 1. <https://antikoru.org/id/article/peradilan-koneksitas-kasus-korupsi>.

¹⁶ Ismail Koto, (2021). 'Kewenangan Jaksa Dalam Melakukan Penggabungan Perkara Korupsi Dan Money Laundering (Studi Kejaksaan Tinggi Sumatera Utara)', *IURIS STUDIA: Jurnal Kajian Hukum*, 2.2, hlm 23.

¹⁷ Vani Kurnia, Sahuri Lasmadi, and Elizabeth Siregar, (2021). 'Tinjauan Yuridis Terhadap Tugas Dan Kewenangan Jaksa Sebagai Penyidik Dalam Perkara Tindak Pidana Korupsi', *PAMPAS: Journal of Criminal Law*, 1.3, hlm 1-11 <<https://doi.org/10.22437/pampas.v1i3.11084>>.

In handling tipikor cases in the military environment, the prosecutor's office is only authorized to handle the case if the case uses a connection mechanism. This is related to article 198 of the Military Justice Law which states that the investigation of criminal cases in the connection mechanism can be carried out by a Permanent Team that has been formed by a joint decree of the Minister and the Minister of Justice. In this case, the prosecutor's office is one of the Permanent Teams that can conduct investigations in accordance with the limits of their authority¹⁸.

D. Legal Liability

Procurement of goods / services is often referred to as Anggaran User (PA) and Budget User Power (KPA), although at first glance the duties are the same, but two have differences where the KPA will later serve as the implementing party for the management of procurement of goods / services. In an agency / institution, full responsibility for the overall procurement of goods and services will be delegated to the holders of the Budget User, but when viewed from the point of view of procurement of goods and services, the absolute responsibility is given to the Commitment Making Office as a signatory of a contract with a third party who has been mandated to carry out the Procurement of certain Goods / Services.

According to the state administration, the parties who use the Procurement of Goods/Services are selected and authorized attributively which are original from the laws and regulations¹⁹. Legal liability for those who commit abuse of authority can be seen from the legal concept of "*geen bevoegdheid zonderver antwoordelijkheid or there is no authority without responsibility*" which in any grant of authority to a government official will inevitably be bound by accountability by the official concerned. Therefore, the management of state finances, especially in the procurement of defense equipment owned by the KPA, must be delegative where the responsibility and responsibility are charged.

In the procurement of The Main Equipment for Weapons Systems (ALUTSISTA) in the Military environment, it is regulated in the Regulation of the Minister of Defense No. 14 of 2020. In paragraphs 7 - 12 it is explained that the duties and authorities of the PA / KPA are ;

- a) Establish a general plan for procurement of Alpalhankam
- b) Establish PPK & PPHP
- c) Establish a procurement evaluation team (TEP) and Commander/Commodore Inspection
- d) Determine the delegation of authority of budget holders to KPA through DIPA / KOM with a value above Rp. 100,000,000,000.00 (serratus billion rupiah)

¹⁸ Panungkunan, Ones Marsahala, Pakpahan², Rodrigo F. Elias³, and Adi T. Koesomo⁴. 2021. "Kewenangan Kpk Dalam Penanganan Kasus Tipikor Di Lingkungan Tni Menurut Uu No. 19 Tahun 2019 Tentang Kpk." *Lex Privatum* 9(8).

¹⁹ Panungkunan, Ones Marsahala, Pakpahan², Rodrigo F. Elias³, and Adi T. Koesomo⁴. 2021. "Kewenangan Kpk Dalam Penanganan Kasus Tipikor Di Lingkungan Tni Menurut Uu No. 19 Tahun 2019 Tentang Kpk." *Lex Privatum* 9(8).

- e) Oversee the implementation of the budget
- f) Submit financial statements in accordance with the provisions of laws and regulations
- g) resolve disputes between the KDP and the ULP/Procurement Officer, in the event of a difference of opinion; and
- h) Supervise the storage and maintenance of all TNI Defense Equipment Procurement Documents.

Therefore, the TNI as the power of budget recipients must be able to manage and be fully responsible for the financial management provided for the needs of the procurement of goods and services in the Defense Equipment sector. If it is obtained that there is misappropriation or corruption committed by members of the military, the TNI can be sentenced according to Law No. 31 of 1997 as amended by Article 2UU No. 20 of 2001:

- (1) Any person who unlawfully commits an act of enriching himself or others or a corporation that can harm the state's finances or a corporation that can harm the state's finances or the country's economy, shall be punished with imprisonment for life or imprisonment of 20 (twenty) and a fine of at least Rp. 200,000,000 (two hundred million), and a maximum of Rp. 1,000,000,000 (one billion).
- (2) In this case, the crime of corruption as referred to in paragraph (1) is carried out under certain circumstances, the death penalty can be imposed.

In addition, members of the military may also be subject to additional penalties of disrespectful revocation of office whose arrangements have been described in articles 35 points 1 and 2 of the Criminal Code which reads the Rights of convicts which by the decision of the Judge can be revoked in matters specified in this Law, or in other general regulations is the right to hold office in general or a certain position, and the right to enter the armed forces.

Legal Mechanisms Carried out in The Enforcement of Corruption in The Procurement of Defense Equipment

A. Non-adjudication

The management of the state budget in the procurement of defense equipment in Indonesia is still relatively weak. This can be seen from the results of the defense audit, where from 2009 to 2020 the combat readiness of the TNI has only increased by 24%, even though when viewed from the defense equipment allocation budget, it has increased to 389%. Where the original budget was IDR 33.67 Trillion, in 2020 it rose to IDR 131.00 Trillion²⁰. In the management of the Defense Equipment procurement budget, there are seven principles that must be obeyed, namely, effective; efficient ; secret ; compete ; accountable ; fair/non-discriminatory ; and be transparent in managing a budget. (regulated in PERMENHAN No. 17 of 2014) .

When implementing the Defense Equipment budget, of course, it requires

²⁰ Kasim Kasim, Waskito Dwiwicaksopturo, Hazen Alrasyid. 2022. "Struktur Pengadaan Alutsista dalam Metode Berpikir Sistem." *Jurnal kewarganegaraan* 6(1).

extra supervision because the amount of budget allocated is very large, thus creating a loophole for budget misappropriation. Such as the case that occurred in the purchase of Heli AW101 involving 4 Military Members with allegations of Corruption Crimes that have harmed state finances up to 220 M. Therefore, it is necessary to have an audit balance to bring about transparency and supervision that can prevent misappropriation of the state budget.

The regulation on the preparation of the state budget has a strong foundation, namely in article 23 paragraph 1 of the 1945 Constitution. The state budget is an instrument that regulates state expenditures and revenues. In addition, the state budget also has a function as authorization, planning, allocation, distribution, stabilization, and supervision to prevent corruption in the state budget²¹. Efforts that can be made to minimize the occurrence of misappropriation of the state budget are²²;

- 1) Prevention Efforts (Preventive) Preparing and improving the quality of the control system and implementing the state budget allocation.
- 2) Detective Efforts to Identify details of activities or budgets to minimize the occurrence of potential misappropriation of the state budget. This identification is set forth in the form of an examination (program audit).

The examination of management and financial responsibility of the state is regulated in Article 9 paragraph (1) of Law No. 15 of 2004, which states that "In the examination of state financial management and responsibility, the CPC can take advantage of the results of the examination of the government's internal supervision apparatus." In order to support the effectiveness of the implementation of audits carried out by external auditors in accordance with the article above, the role and function of internal audits also need to be reaffirmed²³.

The CPC as the executor of the external auditor must be able to carry out its function properly as a state financial supervisor for the management of goods/services and assess the results of the examination to prevent corruption. In carrying out its duties, there are 3 main roles that must be considered by the CPC, namely²⁴;

1. Improving the quality of the examination results which have been divided into 2 groups, namely: The First Group is a general examination stage consisting of finances, performance, etc. while the second group concerns special examinations to detect misappropriation / corruption carried out by investigation.
2. Preventing the occurrence of potential corruption crimes by overhauling the state financial administration system which is very non-transparent and not

²¹ Sazal²³ Munawir. 2020. "Implementasi Pengelolaan Keuangan Negara Dalam Perspektif Ekonomi Is²²." *Al-Intaj Jurnal Ekonomi dan Perbankan syariah* 6(2).

²² Tim Pengkajian SPKN, (2002). 'Upaya Pencegahan Dan Penanggulangan Korupsi Pada Pengelolaan APBN/APBD', *Badan Pengawas Keuangan Dan Pembangunan*, 94.

²³ Soni Eka, Legionosuko Tri, Simatupang Haposan. 2018. "The Role Of Supervision In The Defense Institution Environment In The Framework To Support State Defense System (Study In The Airport Of Airborne Force 2018)" 4.

²⁴ Silitonga, P. S. (2018). Tugas Dan Fungsi Kejaksaan Dalam Melakukan Pemberantasan Tinak Pidana Korupsi. *Lex Privatum*, 6(4).

accountable. In the budget details, there are 2 authorities in controlling, namely: The routine budget will be controlled by the Directorate General of Budget while the Development Budget will be controlled by Bappenas.

3. Reforming, just like other institutions, the CPC also strives to become an independent, free and independent institution, in accordance with the expectations of the 1945 Constitution. Because until now the CPC is still under the control of the Executive.

B. Adjudication

(1) Comparison of Trial Proceedings

Stage	Corruption Court (TIPIKOR)	Military Justice
Authority of Investigation & investigation	<ul style="list-style-type: none"> • KPK [5] ²⁴ • It is explained in article 6 letter c of Law No. 31 of 2002 concerning the KPK that "the KPK has the authority to investigate, investigate, and prosecute corruption crimes." • Police ²⁶ Based on article 14 paragraph (1) letter g states that the police are authorized to investigate criminal acts, 	<p>In article 69 of Law No. 31 of 1997, it has been regulated that:</p> <ul style="list-style-type: none"> • Investigators : Superiors who have the right to punish, Military Police, Prosecutors • Auxiliary Investigators are : <ol style="list-style-type: none"> a. Provos of the Army, Navy, and Air Force b. ³³ovos of the National Police of the Republic of Indonesia
Prosecution	<p>The prosecution ⁴¹ regulated in articles 137-144 of the Criminal Procedure Code. The stages that must be carried out in the prosecution process as stipulated in the article are:</p> <ul style="list-style-type: none"> • The public prosecutor receives the results of the investigation to be examined for the completeness of the file (7-day process) • The public prosecutor made an indictment and merged the case • The prosecution transferred the case to the District Court 	<p>In military courts this stage is included in the process of submitting cases. The implementation in this prosecution will be carried out by the prosecutor, but operationally the responsible judicial is Papera (Pewira Penyerah Perrah Perkara).</p> <p>In this stage, the files that need to be prepared are:</p> <ol style="list-style-type: none"> a) Minutes of opinion of the prosecutor b) A letter of legal opinion submitted to the papera is attached: <ul style="list-style-type: none"> • Minutes • The concept of a case settlement decision in the

		<p>form of a keppera</p> <p>c) Minutes of prosecutor's opinion and legal opinion letter (SPH)</p> <p>d) The closure of the railway will be carried out by the commander of the TNI.</p>
Imprisonment	<p>The process of imposing sanctions on corruption convictions may be subject to penalties as stipulated in article 2 of Law No. 31 of 1999:</p> <p>(1) Life imprisonment / imprisonment is a minimum of 4 years and a maximum of 20 years and a fine of at least Rp.200,000,000 (Two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).</p> <p>(2) The death penalty, if the accused of corruption the state is in a precarious state.</p>	<p>In the case of corruption in the military environment, it is not regulated in the Criminal Code, so in accordance with the provisions of article 2 of the Criminal Code which reads "Against criminal acts that are not listed in this law, which are committed by persons subject to the power of military judicial bodies, general criminal law is applied, unless there are deviations stipulated by law". Therefore, members of the military who commit corruption crimes can be punished in accordance with the provisions of Law No. 20 of 2001 which is an amendment to Law No. 31 of 1999 concerning Corruption Crimes²⁵.</p> <p>In addition, it will also be subject to a criminal offense, namely revocation of office and not being able to enter the armed forces as stipulated in article 35 point 1 35 points 1 and 2 of the Criminal Code..</p>

(2) Types of Trials

a. Military Justice

In the implementation of the sentence of imprisonment / confinement which is accompanied by dismissal from military service, it is carried out at the General Community Institution (LPU) by means of the defendant being handed over by the prosecutor by submitting a letter of introduction and the Minutes of the Convict.

²⁵ Maria Dimova Cookson and Peter M.R. Stirk, '濟無No Title No Title No Title', 2019, 4828-43.

As for military members who are convicted of the death penalty, the prosecutor must prepare the Minutes of Execution of the death penalty, and his execution will be led by the prosecutor by being shot to death by the fire squad that has been prepared. For convicts who are required to pay a fine, they must be paid within 1 month from the time the verdict is determined.

b. **ConnectionAI Court**

The application of this connectional justice is applied when a member of the military is found to have committed a criminal act in which the act was committed simultaneously with the civilian population. In its own mechanism, the judiciary is divided into 2, which means that the act can be tried in the general court unless the decision of the Minister of Defense and Security with the approval of the Minister of Justice states that the case must be examined and tried by a court within the military environment, as stipulated in article 89 of the Criminal Procedure Code Jo article 198 Law No. 31 Th 1997. In order to determine the judiciary, research must be conducted by the military police, prosecutors, prosecutors/high prosecutors and or investigators in the general judicial environment. After that, the results of the Joint research are stated in the Minutes that have been signed by the research team and if in the study there is a similarity / conformity of opinions, it can be reported by the prosecutor / high prosecutor to the attorney general and by the prosecutor to the prosecutor general.

In addition, it is also regulated in article 200 of Law No. 31 of 1997 where the discussion point says that "in determining the court authorized to adjudicate cases, it can be determined in looking at the weight point of the losses caused. If the weight point of the loss is in the interest of the military then the courts that have the right to try are military courts, and vice versa. (Daud, 1999, 页 128-132)

c. **Typical Court**

The establishment of the Corruption Crimes Court is based on article 53 of Law No. 30 of 2002, which in the article states that the Tipikor Court is authorized and tasked with examining and deciding TIPIKOR cases that have been filed by the KPK. Tipikor's case conducted by the state organizer will be decided by the Tipikor court within 90 working days from the date the case is transferred to the Tipikor Court. In addition, the judges in charge of examining and adjudicating in the High Court consist of 2 PN Judges and 3 AdHoc Judges. In the examination until the termination of the Tipikor case, it will race to Law No. 31 of 1999 which has been amended in Law No. 20 of 2001 concerning the Eradication of TIPIKOR.²⁶

CONCLUSION

One of the factors for the occurrence of corruption is the occurrence of modernization which can reduce norms in society, so that if left unchecked, it will be

²⁵ Rosmala Dewi Sakti Prawira, (2018) 'Mekanisme Penyelesaian Tindak Pidana Korupsi Oleh Lembaga Negara Komisi Pemberantasan Korupsi (Kpk)', *PROGRESIF: Jurnal Hukum*, 10.2, 1751-64 <<https://doi.org/10.33019/progresif.v10i2.190>>.

out of control. This is what causes a lot of corruption that occurs. In addition, the strictness of the punishment given by the bureaucracy caused the perpetrators of TIPIKOR to be non-deterred. In handling TIPIKOR cases that occur in the military environment, the Criminal Code does not actually regulate related to special crimes such as corruption, but in imposing penalties, it still races against Law No. 31 of 1999 which has been amended in Law No. 20 of 2001, but the course of the trial process still races against the Criminal Code.

One of the biggest obstacles in enforcing TIPIKOR is the lack of data transparency and the limited authority of independent institutions such as the KPK which should have special authority in the enforcement of TIPIKOR, but cannot access to participate in the enforcement except in the connection mechanism. This mechanism is carried out when a member of the military commits a criminal act together with a civilian and the flow of his education can be carried out by the institutions of the general judiciary and military prosecutors.

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Decision of Court

UUD 1945

KUHPM

¹UHP

UU No 31 Tahun 1997 tentang Peradilan Militer

³¹U No 46 Tahun 2009 Pengadilan TIPIKOR

UU No 30 Tahun 2002 tentang Komosi Pemberantasan Tindak Pidana Korupsi

³⁹U No 14 Tahun 2008.

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