

## Connectivity Case a Juridical Review of the Handling Process before and After the Establishment of the Attorney General in the Military Criminal Field



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**ABSTRACT:** This Indonesia is a country with a large and diverse population, consisting of many islands and a multitude of cultures and customs. The people of this nation live and operate according to existing norms and regulations, coexisting within their midst, which upholds a high regard for a legal system governing societal order. This is why Indonesia can be referred to as a legal state (rechtsstaat), a notion further solidified by Article 1 paragraph (3) of the 1945 Constitution, which declares Indonesia as a legal state. There are four systems of justice in Indonesia: general courts, religious courts, military courts, and administrative courts. These systems stand independently, separate from one another, each with its own functions and absolute authority in carrying out its duties. Thus, each system possesses jurisdiction that cannot be interfered with by other judicial systems. However, despite Indonesia's respect for the law, there are also many Indonesians who violate and disregard the laws in place, acting arbitrarily and without adherence to regulations and existing laws. This is evidenced by the numerous cases that occur, with perpetrators not only being ordinary citizens but sometimes also engaging in criminal acts alongside military personnel, commonly known as the TNI or the Indonesian National Armed Forces. The fact that TNI members exist and live among the civilian population, with their special status, combined with the drive to improve their standard of living or economic motives, leads many of them to engage in criminal activities with civilians, whether as perpetrators, accomplices, or assistants. In several cases involving both TNI members and civilians, they encounter difficulties in their handling. In connection with the above, to enhance the effectiveness of handling connectivity cases (involving perpetrators from both the TNI and civilians), a special institution/organization was established within the Indonesian Attorney General's Office, namely the Deputy Attorney General for Military Crime Affairs.

**KEYWORDS:** Indonesia, Judiciary System, Criminal Offenses, Perpetrators, Connectivity.

### I. INTRODUCTION

The Unitary State of the Republic of Indonesia is a legal state (Rechtsstaat), as stated in Article 1 paragraph (3) of the 1945 Constitution, which declares Indonesia as a legal state.

Although Indonesia upholds the law, a significant portion of its population often violates and does not adhere to the applicable laws, acting arbitrarily and without regard for regulations and laws in place. This is evidenced by the numerous cases that occur, with perpetrators not only being ordinary citizens but sometimes also involving members of the military, commonly referred to as the National Armed Forces of the Republic of Indonesia (TNI), who are individuals bound by voluntary military service in the Armed Forces and are obligated to serve continuously for the duration of their service obligation as regulated in Article 46 paragraph (1) of Law No. 31 of 1997 concerning the Indonesian Military Criminal Code (KUHPM).

The reforms advocated by students in May 1998 have changed the political constellation and legal order in Indonesia, particularly highlighted by the withdrawal of the Dual Function of the TNI (formerly ABRI). The side effects of this status include the perception among the general public that members of the TNI are privileged citizens within society, often escaping legal consequences for their criminal actions or facing opaque enforcement processes. There is also a lack of public trust in the internal handling of cases within the TNI, which is largely closed off or receives minimal media coverage.

One of the results of the reform was the issuance of TAP MPR No. VI/MPR/2000 which decided on a set of rules regarding the institutional separation of the Indonesian National Army and the Indonesian National Police in accordance with their respective roles and functions where the official document stipulated on August 18, 2000 in Jakarta comprehensively explained and reaffirmed the main role of the Indonesian National Army in the field of national defense, while the Indonesian National Police in the field of maintaining state security This 7-page document contains 4 articles. Here are the details of the document's structure:

Article 1: Affirmation of the Indonesian National Army and the Indonesian National Police as institutionally separate.

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Article 2: Differentiation of the roles of the Indonesian National Army and the Indonesian National Police.

Article 3: The roles of the Indonesian National Army and the Indonesian National Police are regulated by a Decree of the People's Consultative Assembly.

Article 4: Enactment of the decree.

Furthermore, the issuance of MPR Decree No. VII/MPR/2020 also delineates the primary roles of the state defense and security apparatus, namely the Indonesian National Armed Forces and the Indonesian National Police, in accordance with MPR Decree No. VI/MPR/2000 regarding the Separation of the Indonesian National Armed Forces and the Indonesian National Police. This official document, established on August 18, 2000, in Jakarta, extensively elucidates the roles, composition, positions, assistance tasks, and participation of both state entities in the governance of the nation. Additionally, it elaborates on the identity of the Indonesian National Armed Forces and the National Police Institution.

In the decree ratified during H.M. Amien Rais's tenure as the Chairman of the MPR, it is reaffirmed that all members of the Indonesian National Armed Forces and the Indonesian National Police must remain neutral, refrain from engaging in any political activities, and cannot exercise their rights to vote or be elected. Members of the state defense and security apparatus can only hold civilian positions after resigning or retiring from military or police service.

This was subsequently followed by the issuance of Indonesian Law No. 2 of 2002 concerning the Indonesian National Police, wherein it officially delineated that the Police were no longer part of the larger TNI/ABRI family, as their primary duties and functions differed, namely the maintenance of domestic security (KAMDAGRI) and law enforcement, distinct from the national defense role of the TNI. Another fundamental change introduced by this law is that if a member of the Indonesian National Police commits a criminal act, they will be prosecuted in the civilian courts rather than military courts.

Article 27, paragraph (1) of the 1945 Constitution stipulates that 'all Indonesian citizens are equal before the law and government and are obligated to prioritize the law and government without exception.' Thus, according to the constitution, there is no differentiation in the eyes of the law and government based on societal groups, whether they are based on geography, race, ethnicity, or between military and civilian.

The reality is that members of the TNI live and interact within society, where their privileged status, combined with the drive to improve their standard of living or economic motives, leads many of them to engage in criminal activities alongside civilians, whether as perpetrators, accomplices, or facilitators. In several cases involving both TNI members and civilians, there have been challenges in handling them, including differences in the application of the law, where the military employs Military Criminal Law and recognizes figures such as Anjum (authorized superiors to judge) and Papera (Officer in charge of the case), as well as the reluctance of TNI members to be interrogated by civilian investigators or those outside the Military Police (POM) and Military Prosecutor's Office (Oditur Militer).

In relation to the above, to enhance the effectiveness of handling cases involving both military personnel and civilians, a specialized institution/organization was established within the Attorney General's Office of the Republic of Indonesia, namely the Deputy Attorney General for Military Crimes (Jaksa Agung Muda bidang Pidana Militer).

The primary duties and functions of this Deputy Attorney General for Military Crimes, abbreviated as Jampidmil, include the authority to conduct investigations into certain cases (such as corruption cases), for which a permanent team consisting of representatives from the Attorney General's Office, Military Police, and Military Prosecutor's Office is formed. It is important to note that the authority of Jampidmil is limited to handling cases involving civilians and Military Personnel. In essence, Jampidmil's authority is confined to Cases of Connectivity in Legal Proceedings. Etymologically, connectivity originates from the Latin word "connexio," meaning a criminal case jointly committed by civilian society and military personnel, adjudicated in civilian courts unless the damage caused by the criminal act pertains to military interests, in which case it is adjudicated in military courts.

The concept of Connectivity Legal Proceedings involves a judicial system for defendants involved in aiding and abetting crimes between civilians and military personnel, subject to the jurisdiction of both civilian and military courts. Thus, Connectivity Legal Proceedings concern crimes of complicity committed jointly by civilians and military personnel, regulated under Articles 55 and 56 of the Indonesian Criminal Code.

In the past, law enforcement in cases of connectivity was not always consistent, sometimes only civilian individuals were prosecuted despite clear involvement of military personnel, or there was bias in sentencing, leading to disparities that undermine the spirit of law enforcement in society, where equality before the law is desired.

When looking at the evolving criminal policies within the community's conceptual framework, they can be categorized into two groups:

1. Criminal policies utilizing criminal law means (penal policy).
2. Criminal policies utilizing means outside of criminal law (non-penal policy).

These two means cannot be separated and can be said to complement each other in efforts to combat crime in society. Before the authority held by Jampidmil, which handles cases involving civilians and military personnel, enforcement against military personnel tended to lean towards non-penal policy solutions. This means that criminal sanctions were not often utilized, but rather, ordinary

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sanctions were imposed or solutions outside of criminal law were pursued. This is why disparities and imbalances were felt by civilian society regarding law enforcement directed towards military personnel.

### II. LITERATURE REVIEW

To gain a deeper understanding of the history of handling connectivity cases before and after the formation of Jampidmil, and to examine Jampidmil's role in the process of handling connectivity cases, it's important to note that Jampidmil is a new structure at the level of Echelon I within the Indonesian Attorney General's Office, established based on Presidential Regulation No. 15 of 2021 concerning the Second Amendment to Presidential Regulation No. 38 of 2010 regarding the Organization and Work Procedures of the Attorney General's Office.

The tasks and authorities of the Attorney General include:

- Filing cassation for legal interests to the Supreme Court within the scope of administrative court proceedings, general court proceedings, religious court proceedings, and military court proceedings.
- Providing legal technical considerations to the Supreme Court regarding the examination of cassation within the scope of administrative court proceedings, general court proceedings, religious court proceedings, and military court proceedings.
- Coordinating, overseeing, and conducting investigations, prosecutions, and prosecutions of criminal acts committed jointly by individuals subject to civilian and military courts.
- Delegating some prosecution authority to the General Prosecutor to carry out prosecutions.

According to Presidential Regulation of the Republic of Indonesia Number 15 of 2021, Article 25A paragraph 1, "The Deputy Attorney General for Military Crimes is an assisting element of the leadership in carrying out the tasks and authorities of the attorney general in the field of technical coordination of prosecutions conducted by the military prosecutors and handling connectivity cases, responsible to the Attorney General."

There are regulations that serve as the basis for handling cases related to connectivity, including:

1. Law No. 14 of 1970 concerning the Basic Provisions of Judicial Authority, Article 22 states:

"Criminal acts committed jointly by those within the jurisdiction of general courts and military courts shall be examined and adjudicated by courts within the jurisdiction of general courts, except in certain circumstances where, according to the decision of the Minister of Defense/Security with the approval of the Minister of Justice, the case must be examined and adjudicated by courts within the jurisdiction of military courts."

2. Law No. 8 of 1981 concerning Criminal Procedure Law, Article 89 states:

"If a criminal act is committed jointly by legal subjects within the scope of General Courts and Military Courts, the jurisdiction lies with the General Courts."

3. Law No. 31 of 1997 concerning Military Judiciary, Article 198 states:

- a. "Criminal acts committed jointly by those subject to military judiciary and those subject to general judiciary shall be investigated and adjudicated by the courts within the jurisdiction of general judiciary."
- b. "The investigation of criminal cases as referred to in paragraph (1) shall be carried out by a permanent team consisting of investigators as stipulated in Article 6 and Military Police of the Indonesian Armed Forces and Military Prosecutors or high-ranking Military Prosecutors according to their respective authorities under the applicable law for the investigation of cases."
- c. "The team referred to in paragraph (2) shall be formed by joint decree of the Minister of Defense and Security and the Minister of Justice."

4. Law No. 8 of 1981 concerning Criminal Procedure Law, Article 90 states:

- a. "To determine whether the case should be adjudicated by a court within the jurisdiction of military courts or a court within the jurisdiction of general courts as referred to in Article 89 paragraph (1), a joint examination shall be conducted by the prosecutor or chief prosecutor and the military prosecutor or high-ranking military prosecutor based on the results of the investigation team referred to in Article 89 paragraph (2)."
- b. "The joint opinion and examination shall be documented in a protocol signed by the parties as referred to in paragraph (1)."
- c. "If there is agreement in the joint examination on the court authorized to adjudicate the case, the prosecutor or chief prosecutor shall report it to the Attorney General and the military prosecutor or high-ranking military prosecutor shall report it to the Military Attorney General."

5. Law No. 8 of 1981 concerning Criminal Procedure Law, Article 91 states:

- a. "If, according to the opinion as referred to in Article 90 paragraph 3, the main harm caused by the criminal act lies in the public interest and therefore the criminal case must be adjudicated by a court within the jurisdiction of general judiciary, the officer in charge of case surrender shall immediately issue a decision on case surrender, which shall be submitted through the military prosecutor or high-ranking military prosecutor to the public prosecutor, as the basis for submitting the case to the competent district court."
- b. "If, according to the opinion, the main harm caused by the criminal act lies in the military interest so that the criminal case must

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be adjudicated by a court within the military judiciary, the opinion as referred to in Article 90 paragraph 3 shall serve as the basis for the Military Attorney General to propose to the Minister, with the approval of the Minister of Justice, the issuance of a Ministerial decision determining that the criminal case shall be adjudicated by a court within the jurisdiction of military judiciary."

c. "The decision referred to in paragraph (2) shall serve as the basis for the officer in charge of case surrender and the prosecutor or chief prosecutor to surrender the case to the military court/military high court."

6. Law No. 8 of 1981 concerning Criminal Procedure Law, Article 94 states:

"If connectivity cases are examined and adjudicated within the jurisdiction of general courts, the composition of the panel of judges shall consist of 3 (three) judges as follows:"

a. "The panel chairman shall be selected from the general court/judicial district."

b. "2 (two) judges shall be selected equally, one from the general court and one from the military court."

"If connectivity cases are examined and adjudicated within the jurisdiction of military courts, the composition of the panel of judges shall consist of:"

a. "3 (three) judges."

b. "The panel chairman shall be selected from the military court."

c. "The panel member shall be selected equally, one from the military court and one from the general court."

d. "The panel member from the general court shall hold a titular military rank."

7. Law No. 31 of 1997 concerning Military Judiciary, Article 199 states:

a. "To determine whether the case shall be adjudicated by a court within the jurisdiction of military courts or a court within the jurisdiction of general courts as referred to in Article 198 paragraph (1), a joint examination shall be conducted by the Prosecutor/Chief Prosecutor and the Military Prosecutor based on the results of the investigation team as referred to in Article 198 paragraph (2)."

b. "The opinion of the joint examination shall be documented in a protocol signed by the parties as referred to in paragraph (1)."

c. "If there is agreement in the joint examination on the court authorized to adjudicate the case, it shall be reported by the Prosecutor/Chief Prosecutor to the Attorney General and by the Military Prosecutor to the Military Attorney General."

8. Law No. 31 of 1997 concerning Military Judiciary, Article 199 states:

a. "If, according to the opinion as referred to in Article 199 paragraph (3), the main harm caused by the criminal act lies in the public interest and therefore the criminal case must be adjudicated by a court within the jurisdiction of general judiciary, the officer in charge of case surrender shall immediately issue a decision on case surrender, which shall be submitted through the Military Prosecutor to the public prosecutor, as the basis for submitting the case to the competent district court."

b. "If, according to the opinion as referred to in paragraph (1), the main harm caused by the criminal act lies in the military interest so that the criminal case must be adjudicated by a court within the military judiciary, the opinion as referred to in Article 199 paragraph (3) shall serve as the basis for the Military Prosecutor General to propose to the Minister, with the approval of the Minister of Justice, the issuance of a Ministerial decision determining that the criminal case shall be adjudicated by a court within the jurisdiction of military judiciary."

c. "The decision as referred to in paragraph (2) shall serve as the basis for the officer in charge of case surrender and the prosecutor or chief prosecutor to surrender the case to the military court/military high court."

9. Law No. 31 of 1999 concerning Corruption Crime, Article 39 states:

"The Attorney General shall coordinate and control the investigation, prosecution, and prosecution of corruption crimes committed jointly by individuals subject to General Courts and Military Courts."

10. Explanation of Article 35 paragraph (1) letter j of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office states:

"The term 'prosecution' in this provision includes technical coordination of prosecution of all criminal cases entrusted to the Attorney General as the highest public prosecutor in the Unitary State of the Republic of Indonesia."

Handling connectivity cases in General/Special Criminal Acts has now been regulated and signed by a Joint Ministerial Decree between the Minister of Defense, the Attorney General, and the Commander of the Indonesian National Defense Forces regarding the Establishment of a Permanent Investigation Team for Connectivity Criminal Cases, replacing Joint Decisions of the Minister of Defense and the Minister of Justice No. K.10/M/XII/1993 and No. M.57.PR.09.03/1983 regarding the Formation of Permanent Teams that are no longer existing or in line with current developments, and there have been changes in the Nomenclature of the Minister of Defense and Security, and the Minister of Justice.

In principle, the Joint Ministerial Decree regulates the Investigation of Connectivity Criminal Cases conducted by the Permanent Connectivity Team according to their respective authorities under the applicable law for criminal investigators. The controllers of the handling of connectivity criminal cases and the permanent connectivity teams are the Attorney General at the central level and the Chief Prosecutor at the provincial level, while the elements of the Permanent Connectivity Team are the Military Police,

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Auditors, Investigators, and Prosecutors. The Chairperson of the Central Permanent Connectivity Team is held by the Deputy Attorney General for Military Crimes, and at the provincial level, it is held by the Assistant Deputy Attorney General for Military Crimes.

Article 89 paragraph (2) of the Criminal Procedure Code states that the investigating apparatus for connectivity is a "Permanent Team" consisting of elements:

1. Elements of the Indonesian National Police investigators;
2. Military Police;
3. Military auditors or high-ranking military auditors.

The Permanent Team is equated with the delineation and boundaries of authority for each team element, based on the respective authority of each team element. This is done through the investigation examination conducted as follows:

1. Suspects, namely civilian perpetrators, are examined by elements of the Indonesian National Police investigators.
2. Perpetrators who are military members are examined by elements of the Military Police investigators and military auditors.

This applies to cases of general criminal acts where Prosecutors are not Investigators but only act as Public Prosecutors, while for Special Criminal Acts such as Corruption and other Economic Crimes, based on the Law, Prosecutors are allowed to conduct Investigations, thus Investigations can be conducted by Prosecutors acting as Investigators.

Regarding the organizational structure and working procedures under the Deputy Attorney General for Military Crimes, 3 (three) technical directorates have been formed, each headed by an official at the level of echelon II (two). The first is the Enforcement Directorate with duties and functions outlined in the Indonesian Attorney General's Regulation No. 1 of 2021. Article 519T explains, "The Enforcement Directorate is tasked with preparing policy formulation and implementation as well as control in the management of reports and complaints, investigating connectivity cases of corruption, money laundering, and other criminal acts based on legal regulations and coordinating investigations conducted by investigators within the Indonesian National Defense Forces and other investigators, as well as managing evidence."

The next directorate is the Prosecution Directorate, as described in Indonesian Attorney General's Regulation No. 1 of 2021 Article 519AF, which outlines its main duties as "Implementing the preparation, formulation of policies, coordination, implementation, and control of actions: research investigation results, pre-prosecution, examination, additions, providing legal opinions to case surrendering officers, case surrender, case closure, termination of prosecution, prosecution, resistance, ordinary legal efforts, implementation of judge decisions, as well as managing evidence for connectivity cases and criminal cases whose prosecution is conducted by auditors.

The last directorate is the Directorate of Extraordinary Legal Efforts, Execution, and Examination, which is explained in Indonesian Attorney General's Regulation No. 1 of 2021 Article 519AR as "Implementing the preparation, formulation of policies, coordination, implementation, and control of actions: implementation of court decisions that have obtained final legal force, optimization of the return of state financial losses and settlement of seized assets, supervision of the implementation of parole, probation supervision, and conditional release decisions, requests for clemency, amnesty, and abolition, extraordinary legal efforts, and examination of connectivity cases and criminal cases whose prosecution is conducted by auditors."

### **III. METHODOLOGY**

This Research method is used to understand a subject or object of study and find scientifically justifiable answers, including its validity. The methods used in this research are as follows:

#### **1. Research Type**

The type of research used is normative legal research, also known as doctrinal research. It is focused on examining the application of rules or norms in positive law, using a statute approach. This approach involves studying statutory regulations related to the five central research topics, covering the principles of law, legal systematics, vertical and horizontal synchronizations to obtain secondary data including primary legal materials, secondary legal materials, and tertiary legal materials. Normative legal research aims to obtain objective law (legal norms).

#### **2. Legal Research Approach**

This research uses the approach known as the statute approach and library research, systematically studying and analyzing books, statutory regulations, and other sources related to the topics discussed in this thesis. It examines juridical concepts related to the implementation of criminal law regulations and their application in the policy of handling crimes in connectivity cases in Indonesia.

#### **3. Data Sources**

The data sources used in normative legal research consist of secondary data, including:

- a. Primary Legal Materials: Consisting of statutory regulations hierarchically.
- b. Secondary Legal Materials.
- c. Tertiary Legal Materials.

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d. Websites.

### IV. RESULTS AND DISCUSSION

The Deputy Attorney General for Military Affairs, commonly referred to as Jampidmil, is an assisting element to the leadership in carrying out the duties and authorities of the Attorney General of the Republic of Indonesia in the field of Military Criminal Law, responsible to the Attorney General of the Republic of Indonesia. The Deputy Attorney General for Military Criminal Affairs is led by a Deputy Attorney General for Military Criminal Affairs assisted by an official at the level of echelon II (two), namely the Secretary of Jampidmil, the Director of Prosecution, the Director of Prosecution, and the Director of Execution, Extraordinary Legal Efforts and Examination. With the existence of Jampidmil, its purpose is to represent the implementation of the single prosecution system principle, which means no other institution has the right to prosecute except under the supervision of the Attorney General as the main public prosecutor of the state.

The single prosecution system principle is stipulated in Article 2 paragraph (3) of Law No. 16 of 2004, which states that "the public prosecutor's office is one and inseparable" (een en ondeelbaar). With the establishment of the Deputy Attorney General for Military Affairs, it is a clear path in law enforcement in Indonesia, especially in the enforcement and handling of legal matters in connectivity cases involving two or more individuals, namely civilians and members of the TNI. This is evident from the authority and functions held by Jampidmil and is in line with assisting in implementing the principles of fast, inexpensive, straightforward, and light-cost justice.

Basically, civilian perpetrators and military perpetrators can be examined and tried by courts within the jurisdiction of civil jurisdiction. However, the obstacle lies in the authority of the military court to judge those within the jurisdiction of the Military Judiciary. To address this issue, lawmakers created provisions for connectivity and included them in criminal procedural law to resolve the issue.

The author argues that the Criminal Procedure Code (KUHAP) explicitly states that the court within the jurisdiction of civil jurisdiction takes precedence over the court within the jurisdiction of the military judiciary in judging connectivity. This means that if there is a criminal act involving both civilian and military perpetrators, the court within the jurisdiction of civil jurisdiction has the authority to judge the connectivity case, unless there are significant military interests harmed, based on a decision by the Minister of Defense and Security and the approval of the Minister of Justice.

### V. CONCLUSIONS

In practice, the application of connectivity provisions in the Criminal Procedure Code (KUHAP), Military Judiciary Law, Judiciary Power Law, and related regulations is often disregarded by law enforcement officials, both in the civilian and military judicial systems, either for legal reasons or for reasons outside the scope of the law. As explained above, connectivity involves criminal acts involving both civilian and military perpetrators. The purpose of establishing connectivity provisions is to ensure effective case handling and to prevent disparities between civilian and military perpetrators. Referring to the connectivity provisions in the Criminal Procedure Code, Military Judiciary Law, and Judiciary Power Law, connectivity cases are examined and adjudicated by courts within the civilian judicial system, unless the primary concern is military interest, taking into account the previously mentioned conditions.

Connectivity cases are not a new phenomenon in Indonesia, and their regulations are scattered throughout various laws and regulations. However, their implementation poses its own complexities due to the lack of comprehensive regulations, especially concerning the position of the Prosecutor's Office in handling connectivity cases and the position of the Public Prosecutor during the Prosecution Stage in military court proceedings, conversely the position of the Prosecutor in the trial of connectivity cases in civilian courts.

The establishment of Jampidmil aims to unify scattered puzzles in accordance with the principles of justice: speed, straightforwardness, and affordability, desired by seekers of justice. Therefore, Jampidmil seeks breakthroughs that are sometimes not explicitly regulated in laws or other regulations, with the spirit of enforcing fair and impartial justice to find new or ideal formats in handling connectivity cases.

In this regard, the author proposes the following:

1. The need for relevant stakeholders to come together to devise a standardized format for handling connectivity cases comprehensively.
2. The need to update regulations related to connectivity that are no longer in line with the developments of the times and the direction of the 1998 Reform, especially considering several changes such as the separation of the police from the military, the absence of the Ministry of Justice, Ministry of Defense and others.
3. Clarifying the positions of the Public Prosecutor and the Prosecutor in laws and other regulations more explicitly in the prosecution process before the court and the execution stage, with the spirit of enforcing equitable justice for all.

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