

The urgency of the existence of a storage house for state confiscated items in the military court environment

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Abstract

Purpose: The Storage House for Confiscated State Goods (Rupbasan) within the Military Court environment is regulated in Article 93 paragraph (1) of Law Number 31 of 1997 concerning Military Courts, which furthermore delegates the TNI Commander to issue a Decree of the TNI Commander regulating Rupbasan within the Military Court environment, but in reality 27 years have passed since this law came into effect until now the Rupbasan within the Military Court environment has not been felt to exist because there has been no Decree of the TNI Commander regulating Rupbasan. This is urgent because Rupbasan is a place designated by law for the storage of confiscated state goods and state looted goods with the aim that these goods are stored properly during the ongoing legal process and can be used as evidence or returned to their owners after the completion of the legal process based on a court decision.

Research Methodology: This research is a normative legal research using comparative law at the Ministry of Law and Human Rights (Kemenkumham) and the Corruption Eradication Commission (KPK).

Conclusions: The conclusion of this study is that there is no specific regulation governing the Rupbasan in the Military Court environment. The absence of this regulation creates a legal vacuum that has an impact on the management of evidence in the Military Court environment which is still carried out by the ranks of the Oditurat. Compared to the Rupbasan under the Ministry of Law and Human Rights and the Corruption Eradication Commission, the Military Court appears to be lagging behind in terms of the regulation and implementation of the Rupbasan. The management of confiscated objects in the Ministry of Law and Human Rights and the Corruption Eradication Commission has been regulated in detail through various regulations and standard operating procedures, while the Military Court still faces legal uncertainty in the management of confiscated objects. The creation of legal products in the TNI environment must be guided by the TNI Commander Regulation Number 43 of 2015 concerning the Formation of Legal Products in the Indonesian National Army Environment as amended by the TNI Commander Regulation Number 48 of 2018 concerning Amendments to the Regulation of the Indonesian National Army Commander Number 43 of 2015 concerning the Formation of Legal Products in the National Army Environment.

Keywords: Urgency, Rupbasan, Military Court

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1. Introduction

The Judicial Body in Indonesia is regulated in the constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia which explains that: Judicial power is exercised by a Supreme Court and the Judicial Bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court.

The rules regarding "the composition, position, membership, and procedural law of the Supreme Court and the Judicial Bodies under it are regulated by law." This reflects the importance of detailed regulations regarding the structure and function of the Supreme Court and the Judicial Bodies under it, as an integral part of the Indonesian judicial system. The Constitution emphasizes the need for firm and comprehensive laws to regulate crucial aspects such as the composition and position of the Supreme Court, its membership, and the legal procedures that must be followed. These regulations are the foundation for the Indonesian judicial system, providing clarity in the implementation of judicial power, including the Military Court which has a special function and role in handling cases of a Military nature (Pebrianto, 2023; Suartama & Dewi, 2023).

Law enforcement against evidence of crime (*corpus delicti*) is an integral part of military criminal procedure law. In criminal cases, strict action is often required in the form of confiscation of goods or objects belonging to the suspect to be used as evidence in the examination process in court. If evidence or confiscated objects from criminal acts are not managed with adequate authority, clear operational standards, and good management, these items are susceptible to misuse by certain parties. As a result, there can be loss of evidence, misuse of evidence, and various other forms of deviation with various modes and motives, plus facilities for storing confiscated objects in the military justice system do not yet exist.

The State Confiscated Object Storage House, often abbreviated as Rupbasan, is a facility used by the government to store objects confiscated as a result of legal action or investigation. These objects are monitored and maintained to keep them safe and free from damage or loss. The main function of this storage house is to ensure that these items are stored properly during the ongoing legal process and can be used as evidence or returned to their owners after the completion of the legal process based on a court decision (Pratiwi, Dewi, Widnyani, & Rahayu, 2023).

The criminal procedure law generally functions to limit the state's ability to protect all citizens involved in the criminal justice process (Jovan 2016), therefore Rupbasan was created to prevent abuse of authority resulting from investigative actions such as confiscation (*inbesilagneming*) (Dinata & Abduh, 2019), in a broad sense the purpose of establishing this facility is to prevent abuse of authority by the state by providing transparency and accountability in the management of confiscated objects. Rupbasan acts as a tightly controlled location where confiscated objects can be secured and monitored during the legal process, with a centralized and independently supervised storage house, it is hoped that it can reduce the risk of abuse of power or violation of individual rights related to confiscated objects. This facility can also provide clear and documented records of these objects, providing assurance that the legal process is transparent. According to Law Number 31 of 1997 concerning Military Justice, Article 93 paragraph (1) stipulates that confiscated objects must be placed in a state confiscated objects storage house located in the Military Court environment. Furthermore, Article 93 paragraph (3) states that further regulations regarding the storage house for confiscated state property will be determined by the Commander-in-Chief's Decree. This regulation emphasizes the importance of storing confiscated state property in special facilities under the jurisdiction of the Military Court and there is a clear legal basis regarding the management and storage of confiscated property as part of the Military Court process. The provisions regarding Article 93 paragraph (3) mean that this law gives the TNI Commander-in-Chief the authority to regulate in detail the operation and administration of the storage house. The TNI Commander-in-Chief's Decree is expected to provide clear and specific guidelines regarding the procedures for storage and supervision as well as management of confiscated state property (Damaiyanti, Nofrial, & Erniyanti, 2022; Harefa, Idham, & Erniyanti, 2023).

The existence of Rupbasan in the Military Court environment is currently not felt as mandated by law. Based on the explanation of Article 93 paragraph (3) of Law Number 31 of 1997, it is stated that "as long as the storage house for confiscated state objects is not yet available, the confiscated state objects will be stored at the Military Police office, the Auditorate, the Court, or the Government Bank building. In urgent circumstances, storage can also be carried out at another location or at the place of origin where the goods were confiscated". The law provides the choice of alternative storage locations before a special storage house is designated, the existence of Rupbasan in the Military Court environment must still be regulated, meaning that the storage house is considered an ideal place to store confiscated state objects, and further regulation regarding the storage house is needed so that it can be operated effectively.

The TNI Commander's Decree on Rupbasan has not been issued, this can cause legal uncertainty because there is no specific operational guideline related to Rupbasan. Storage in places that may not be specifically designed for this purpose can increase the risk to the security and integrity of state confiscated objects, therefore there needs to be an effort to improve the state confiscated object storage system by holding Rupbasan in the Military Court environment as a storage place, because there is no TNI Commander's Decree regarding Rupbasan and to find out the function and benefits of Rupbasan, the researcher is interested in making this topic the focus of research with the title, "**The Urgency of the Existence of a State Confiscated Object Storage House in the Military Court Environment.**" This research is expected to provide a special contribution to the understanding and problems that arise in the context of Military Justice.

1.2 Problem Formulation

Based on the description above, the author formulates the problem and organizes it into several relevant questions, namely:

1. How are the regulations related to the State Confiscated Goods Storage House in the Military Court environment?
2. What is the Concept of the State Confiscated Goods Storage House in the Military Court environment?

2. Literature Review

2.1 Conceptual Framework

- a. Urgency is a pressing necessity; something that is very important; the importance of something.
- b. Existence is the meaning of Existence.
- c. The State Confiscated Goods Storage House, hereinafter referred to as Rupbasan, is a place for goods confiscated by the State for the purposes of the judicial process.
- d. The Military Court is the executor of judicial power within the Armed Forces, tasked with enforcing law and justice while still considering the interests in organizing national defense and security.
- e. State Confiscated Goods, hereinafter referred to as Basan, are goods confiscated by the State for the purposes of the judicial process.

2.2 Definition of Confiscation

Article 1 of the Criminal Code number 16 provides the following definition of confiscation:

Confiscation is a series of actions by investigators to take over and/or store under their control movable or immovable objects, tangible or intangible, for the purpose of evidence in investigations, prosecutions, and trials (Rohmadi & Irmawati, 2020).

Confiscation regulations are spread across the articles of the Criminal Procedure Code, most of which are found in Chapter V, part four, starting from Article 38 to Article 46 and others are located in Chapter XIV, part two of the law, starting from Article 128 to Article 130 (Harahap, 2007). Confiscation is not only regulated in the Criminal Procedure Code, there are also regulated in other regulations, this is legal according to Article 284 of the Criminal Procedure Code.

Confiscation has a different purpose from a search. A search is carried out for the purposes of investigation or examination, while confiscation aims to "provide," especially as evidence in a trial. Without evidence, a case cannot be brought to court, so to ensure the completeness of the evidence in the case, investigators carry out confiscation so that the items can be used as evidence in the investigation steps, the prosecution process, and examination at the trial in court (Harahap, 2007).

2.3 State Confiscated Objects

Regulation of the Minister of Justice of the Republic of Indonesia No. M.05.UM.01.06 of 1983 concerning the Management of State Confiscated Goods and State Confiscated Goods in Confiscated Goods Storage Houses, provides a definition of confiscated goods, namely:

Confiscated Goods/State Confiscated Goods (abbreviated as Basan) are goods confiscated by investigators, public prosecutors or officials who because of their positions have the authority to confiscate goods for the purposes of evidence in the trial process.

Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code Article 1 number 4 defines "Confiscated goods are goods confiscated by the state for the purposes of the trial process". So, there are many types of confiscated goods, both tangible and intangible, movable or immovable from the results of a crime.

2.4 Overview of State Storage Houses for Confiscated Objects

Rupbasan is a Storage House for Confiscated State Goods. Article 27 paragraph (1) of Government Regulation of the Republic of Indonesia Number 27 of 1983, which regulates the implementation of the Criminal Procedure Code, states that objects that need to be stored as evidence in investigations, prosecutions, and trials in court, as well as goods confiscated based on a judge's decision, must be stored in Rupbasan, thus there is an understanding that:

- a. All goods confiscated by the state for the purposes of the judicial process must be stored in Rupbasan.
- b. Rupbasan is the only storage place for goods confiscated by the state, including goods confiscated based on a judge's decision.
- c. Rupbasan has an institutional function as a storage center for confiscated goods and state seizures from all agencies that confiscate the proceeds of crime.
- d. If the confiscated goods cannot be stored at Rupbasan, the storage method will be determined by the Head of RUPBASAN, as regulated in Article 27 paragraph (2) of Government Regulation Number 27 of 1983.

Government Regulation of the Republic of Indonesia Number 27 of 1983 also mandates that the management of Rupbasan be carried out by the Ministry of Justice. The Minister of Justice further regulates the organizational structure, main tasks, and functions of Rupbasan through the Decree of the Minister of Justice of the Republic of Indonesia Number: M.04.PR.07.03 of 1985 concerning the Organization and Work Procedures of Detention Centers and Rupbasan, which furthermore concerning the procedures for managing confiscated objects and state confiscated goods are regulated in the Regulation of the Minister of Law and Human Rights Number 16 of 2014. This regulation also regulates the definition of Rupbasan, namely: "The State Confiscated Object Storage House hereinafter referred to as Rupbasan is a place for storing and managing confiscated objects and state confiscated goods."

The management of confiscated objects and state confiscated goods in Indonesia has made significant progress based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH.-01.PR.01.01 of 2010 concerning the Strategic Plan of the Ministry of Law and Human Rights for 2010-2014. The Directorate General of Corrections of the Ministry of Law and Human Rights in this regulation has a Directorate that is responsible for formulating and implementing standardization policies and providing technical guidance in the management of state confiscated objects and state seized goods. The Directorate is known as the Directorate for the Management of State Confiscated Objects and State Confiscated Goods.

Law Number 31 of 1997 concerning Military Justice, Rupbasan is regulated in Article 93 paragraph (1) and (3) which reads:

- 1) Confiscated state goods are stored in the state confiscated goods storage house within the Military Justice environment; and
- 2) The state confiscated goods storage house as referred to in paragraph (1) is further regulated by the Commander's Decree.

This means that the Article emphasizes that confiscated state goods must be placed in the Rupbasan which is within the military justice environment. There is a clear legal basis related to the management and storage of goods confiscated as part of the Military Justice process. The provisions regarding the Rupbasan are then stipulated through the Commander's Decree, which gives the Commander the authority to regulate in detail the operation and administration of the storage house. The purpose of this provision is to ensure that the process of managing and storing confiscated state goods can be adjusted to the needs and regulations in force within the Military Justice environment. Therefore, it is hoped that the Commander's Decree can provide clear and detailed guidance regarding the procedures for storing, supervising and managing confiscated state objects in accordance with applicable legal and security principles.

3. Research methodology

3.1. Research Type

This study uses normative juridical, in this study the type that the author chose was comparative law, because the author saw differences in the rules regarding Rupbasan in the General Court environment, the Corruption Eradication Commission (KPK) and in the Military Court environment.

3.2. Nature of Research

This research is descriptive analytical in nature, namely to obtain an overview of the selected research object for further analysis in accordance with the relevant statutory provisions, legal theories and the opinions of competent experts.

3.3 Legal Materials

The primary legal materials in this thesis are:

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Decree of the People's Consultative Assembly of the Republic of Indonesia Number VII/MPR/2000 of 2000 concerning the Role of the Indonesian National Armed Forces and the Role of the Indonesian National Police.
- 3) Law Number 1 of 1946 concerning Criminal Law Regulations.
- 4) Law Number 39 of 1947 concerning the Military Criminal Code (KUHPM).
- 5) Law Number 8 of 1981 concerning the Criminal Procedure Code.
- 6) Law Number 31 of 1997 concerning Military Justice.
- 7) Law Number 30 of 2002 concerning the Corruption Eradication Commission.
- 8) Law Number 34 of 2004 concerning the Indonesian National Armed Forces.
- 9) Law Number 48 of 2009 concerning Judicial Power.
- 10) Law Number 12 of 2011 concerning the Formation of Legislation.
- 11) Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code.
- 12) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.MH.05.OT.01.01 of 2010 concerning the Organization and Work Procedures of the Ministry of Law and Human Rights of the Republic of Indonesia.
- 13) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2014 concerning Procedures for the Management of State Confiscated Goods and State Confiscated Goods at the State Confiscated Goods Storage House.

- 14) Decree of the Minister of Justice of the Republic of Indonesia Number M.04.PR.07.03 of 1985 concerning the Organization and Work Procedures of State Detention Centers and State Confiscated Goods Storage Houses.
- 15) TNI Commander Regulation Number 43 of 2015 concerning the Formation of Legal Products in the TNI Environment as amended by TNI Commander Regulation Number 48 of 2018 concerning Amendments to TNI Commander Regulation Number 43 of 2015 concerning the Formation of Legal Products in the Indonesian National Army Environment.
- 16) TNI Commander Decree Number Kep/246/III/2016 dated March 30, 2016 concerning Technical Instructions for the Procedures for Storing Evidence in the Auditorate Environment.
- 17) Army Chief of Staff Decree Number Kep/518/VI/2020 dated June 16, 2020 concerning Technical Instructions for the Management of Evidence.

3.4 Data Collection

The process of collecting legal documents is carried out through library research, a study of documents or library materials, namely secondary legal materials (Soekanto, 2006). This library method involves visiting libraries such as the National Library, the Military Law College and several university libraries to read, review, and study literature and other sources related to the thesis topic. The purpose of this visit is to obtain theoretical materials that are directly or indirectly related to the formulation of the problem that will be used as a theoretical basis.

3.5 Data Analysis

The author uses a deductive method, where the work is done by concluding concrete knowledge regarding the correct and appropriate rules to be applied in solving a problem, linked to the opinions of previous scholars.

3.6 Drawing Conclusions

Drawing conclusions is done using Deductive Logic, namely by drawing conclusions from universal knowledge to concrete particular knowledge (Rohmadi 2020). The study of these general theories will be analyzed specifically from the aspect of Law Number 31 of 1997 concerning Military Justice.

4. Results and discussions

4.1. Storage House for Confiscated Objects in General Courts

4.1.1. Arrangement of Storage House for Confiscated State Goods in General Courts

The State Confiscated Goods Storage House (Rupbasan) is the only place to store Confiscated Goods (Basan) designated by the Criminal Procedure Code. Rupbasan is essentially an institution that is given the authority to carry out the management of confiscated goods and state confiscated goods (Yanto & Budiman, 2020). The storage of Basan in Rupbasan is intended for the purposes of the judicial process starting from investigation, prosecution to examination in court.

Follow-up to the article above as the implementation of the Criminal Procedure Code, the Government issued Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, regarding Rupbasan regulated starting from Article 26 to Article 34 which in essence regulates, among others:

- a. Establishment of Rupbasan in each district/city capital.
- b. Confiscated goods must be stored in Rupbasan for the purposes of evidence including goods declared confiscated.
- c. The use of confiscated goods must be accompanied by a letter of request from an official who is legally responsible.
- d. Management of Rupbasan at the Ministry of Law and Human Rights.
- e. Regulation of the responsibility of the Head of Rupbasan only physically and administratively (Donald 2018).

Government Regulation Number 27 of 1983 stipulates that Rupbasan is managed by the Ministry of Justice, which has now changed to the Ministry of Law and Human Rights of the Republic of Indonesia.

This regulation states the establishment of Rupbasan in each capital city of the Regency/Municipality, but in reality this has not been realized, Rupbasan has not been formed in each Regency/Municipality, there are only 63 operational units out of 210 so that 146 units have not been formed (for almost 35 years), currently the number of Regencies/Cities throughout Indonesia is approximately 530 (Priyanto 2020).

Table 1. Number of Districts/Cities in Indonesia

| Class I Rupbasan | | Class II Rupbasan | |
|------------------|-----------------|-------------------|----------------|
| Num | Location | Num | Location |
| 1 | Banda Aceh | 1 | Bangkinang |
| 2 | Terrain | 2 | Bengkalis |
| 3 | Field | 3 | Rengat |
| 4 | Pekanbaru | 4 | Tanjung Pinang |
| 5 | Jambi | 5 | Baturaja |
| 6 | Palembang | 6 | Pangkal Pinang |
| 7 | Lampung | 7 | Metro |
| 8 | Bengkulu | 8 | Kotabumi |
| 9 | West Jakarta | 9 | Arga Makmur |
| 10 | South Jakarta | 10 | Attack |
| 11 | East Jakarta | 11 | Indramayu |
| 12 | North Jakarta | 12 | Wonosari |
| 13 | Central Jakarta | 13 | Water |
| 14 | Bandung | 14 | Bantul |
| 15 | Cirebon | 15 | Wonogiri |
| 16 | Yogyakarta | 16 | Cilacap |
| 17 | Semarang | 17 | Purbalingga |
| 18 | Surakarta | 18 | Purwokerto |
| 19 | Pekalongan | 19 | Sragen |
| 20 | Surabaya | 20 | Blitar |
| 21 | Probolinggo | 21 | Jombang |
| 22 | Pasuruan | 22 | Mojokerto |
| 23 | Pontianak | 23 | Sanggau |
| 24 | Singkawang | 24 | Large sumbawa |
| 25 | Palangkaraya | 25 | Ternate |
| 26 | Banjarmasin | 26 | Manokwari |
| 27 | Samarinda | | |
| 28 | Manado | | |
| 29 | Gorontalo | | |
| 30 | Hammer | | |
| 31 | Makassar | | |
| 32 | Kendari | | |
| 33 | Denpasar | | |
| 34 | Mataram | | |
| 35 | Kupang | | |
| 36 | Ambon | | |
| 37 | Jayapura | | |

Source: Data processed from the 2019 correctional database system.

The background or rationale for the establishment of the Rupbasan institution is as follows:

- a. The existence of Criminal Reform, namely the establishment of Law Number 8 of 1981 concerning the Criminal Procedure Code which pays more attention to human rights by implementing the principle of the "check and balances" mechanism among law enforcement officers.

- b. The existence of changes to colonial legacy legislation (HIR) which is no longer in accordance with the demands of society.
- c. The existence of pressure or demands for human rights protection, especially protection of property and property rights (Universal Declaration of Human Rights) in terms of protected property, stated in Article 17 paragraphs (1) and (2).
- d. The existence of Law Number 39 of 1999 concerning Human Rights which states that the state is obliged to provide protection for individuals, families and property (Article 29).
- e. Guaranteeing the efficiency and effectiveness of services in the judicial process in terms of BASAN as a means of evidence.
- f. The confiscated objects can be maintained in a single unit, so that they are easy to maintain and there are certain officials who are physically responsible for the confiscated objects.
- g. Subjective experience or weaknesses in the maintenance of BASAN in the past, have a negative impact on Confiscated Objects in the Judicial process because there is no check and balances process (Febrian 2013).

The organizational structure, duties and authorities of Rupbasan are further regulated by the Minister as mandated in Article 30 of Government Regulation Number 27 of 1983. The Indonesian Ministry of Justice issued Decree of the Indonesian Minister of Justice Number M.04.PR.07.03. of 1985 concerning the Organization and Work Procedures of State Detention Centers and State Confiscated Goods Storage Houses. Matters concerning the Rupbasan organization are regulated in Articles 27 to 34. In this decree, the Rupbasan organization is divided into two classes, namely Class I Rupbasan and Class II Rupbasan.

a. Class I (one) State Confiscated Goods Storage House

Class I (one) Rupbasan consists of:

- 1) Administration and Maintenance Sub-Section.
- 2) Security and Management Sub-Section of Rupbasan.
- 3) Administration Officers.

4.1.2. Regulations on Management of State Confiscated Goods and State Confiscated Goods

Management of State Confiscated Goods and State Confiscated Goods was initially regulated in the Regulation of the Minister of Justice Number M.05.UM.01.06 of 1983 concerning Management of Confiscated Goods and Confiscated Goods in the State Confiscated Goods Storage House, adjusting to the development of the era and increasingly complex needs and correcting the weaknesses in the Regulation of the Minister of Justice, the Government changed the regulation with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2014 concerning Procedures for Management of State Confiscated Goods and State Confiscated Goods in the State Confiscated Goods Storage House.

Confiscated goods that are categorized as easily damaged, dangerous, or incur high costs, the Head of Rupbasan can recommend to the legally responsible agency to conduct an auction or destruction in accordance with the provisions of applicable laws and regulations. Recommendations are submitted in writing to the head of the legally responsible agency with a copy to the Director General of Corrections and the Head of the local Regional Office of the Ministry of Law and Human Rights.

4.2. Storage House for Confiscated Objects in Military Courts

4.2.1. Arrangement of Storage House for Confiscated State Objects in the Military Court environment

The storage house for state confiscated objects within the Military Court environment has been regulated in Article 93 paragraph (1) of Law Number 31 of 1997 concerning Military Courts "State confiscated objects are stored in the Rupbasan within the Military Court environment", which means that there is a place to store state confiscated objects within the Military Court environment, namely the Rupbasan. This law mandates that the storage house for state confiscated objects as referred to in paragraph (1) is further regulated by the Commander's Decree", but in reality the Commander's Decree has not been issued to date. The storage of confiscated objects for trial purposes within the Military Court environment is currently carried out by the ranks of the Auditorate, both the Military Auditorate

(Otmil) and the High Military Auditorate (Otmilti). This is based on the explanation of Article 93 paragraph (1) of Law Number 31 of 1997 which states that:

As long as there is no State Confiscated Goods Storage House, the confiscated state goods are stored at the Military Police office, or the Audit Office, or the Court office, or the Government Bank building, and in compelling circumstances in another place or at the original place where the goods were confiscated.

4.2.2. *Storage House for Confiscated Objects in the Corruption Eradication Commission (KPK)*

The establishment of the State Confiscated Goods Storage House (Rupbasan) by the KPK is based on several reasons as conveyed by Mr. Rahmaludin Saragih, Head of the KPK Rupbasan Task Force in an interview conducted on a limited basis at the KPK Rupbasan. The reasons are as follows.

The KPK Rupbasan is considered necessary to be established because so far evidence obtained from corruption crimes has been stored or deposited in the Rupbasan which is under the auspices of the Ministry of Law and Human Rights of the Republic of Indonesia. The custody of evidence at the Ministry of Law and Human Rights is considered not optimal. Some of the problems faced include facilities or storage and maintenance places that are not optimal, so that the items entrusted are not properly maintained.

The KPK has objectives related to the achievement of asset *recovery* and the protection of human rights for the owner of evidence. The KPK is mandated by the state not only to eradicate corruption but also to return losses caused by corruption crimes to the state. Asset *recovery* is obtained through asset tracking to the auction of evidence obtained by the KPK. In order for the value of evidence to be maintained until the time of auction, a place, management, and Human Resources (HR) are needed who can maintain the value of the item.

There is a joint decision involving the Police, the Attorney General, the KPK, the Ministry of Law and Human Rights, the Supreme Court, and the Minister of Finance regarding the Synchronization of the Implementation of the State Confiscated Goods and State Confiscated Goods System. This joint decision states that the Law Enforcement Apparatus (APH) can or can make it possible to build or prepare a storage place for state confiscated goods and state loot if the Rupbasan under the auspices of the Ministry of Law and Human Rights of the Republic of Indonesia cannot meet the needs.

Based on the statement from Mr. Rahmaludin Saragih, the KPK considers it necessary to establish its own Rupbasan to achieve and support the main tasks in terms of eradicating corruption and achieving the *recovery of* Indonesian state assets.

The KPK Rupbasan was established and inaugurated in 2022 in East Jakarta. The position of the KPK Rupbasan is in the Deputy for Evidence Enforcement, more precisely in the Directorate of Asset Tracking, Evidence Management, and Execution (Labuksi). Commission Regulation (Perkom) Number 07 of 2020 concerning Organization and Work Procedures (Ortaka) of the KPK states that the Directorate of Corrections has three main activities, namely asset tracking, evidence management, and execution.

In the evidence management section, it is in charge of storing, securing and managing, in this Ortaka it does not mention in detail the organizational structure of Rupbasan. Perkom Number 07 of 2020 states that each Directorate in the KPK has the authority to form a task force. Because the KPK Rupbasan Organization is not regulated in detail, the Director of Labuksi formed task forces which include the KPK Rupbasan Management task force. The establishment was determined through the Decree of the Chief Deputy for Evidence Enforcement. At this time, Rupbasan is led by the Head of the Rupbasan Management Task Force, Mr. Rahmaludin Saragih. The Task Force can determine the organizational structure according to the needs submitted through the Minutes to the Head of Deputy. At this time, the

KPK Rupbasan Management Task Force has formed its organization according to the needs faced, namely:

- a. Service Team.
The Service Team is a team in charge of the delivery of goods or custody, borrowing or picking up goods for final purposes.
- b. Maintenance Team.
This Maintenance Team is in charge of maintaining evidence in the KPK Rupbasan, be it vehicles or other valuables.
- c. Document and evidence placement team.
This team is in charge of preparing the place and storing documents or goods received by the KPK and managing the data of these items in detail.

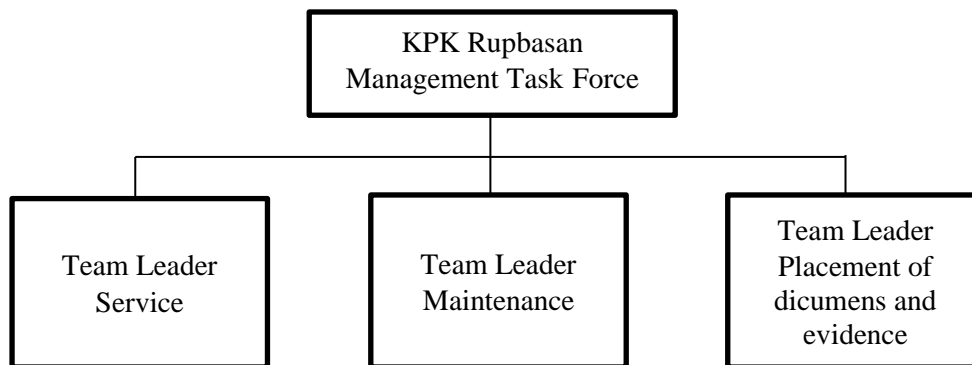


Figure 1. Organizational Structure of the KPK Rupbasan Management Task Force

This organization is not permanent but can change at any time according to the needs at hand.

4.3. Analysis of the Arrangement of State Confiscated Goods Storage Houses in the Military Justice Environment

Currently, there are no regulations related to the State Confiscated Goods Storage House (Rupbasan) within the Military Court. This is because the mandate of Article 93 paragraph (3) of Law Number 31 of 1997 concerning Military Courts which states that the State Confiscated Goods Storage House is further regulated by the Decree of the TNI Commander has not been implemented. Without specific rules from the TNI Commander, the management of evidence in the Military Court environment is still carried out by the ranks of the TNI Inspector General, both Otmilti and Otmil.

Compared to the Rupbasan at the Ministry of Law and Human Rights and the KPK, the Military Court still seems to be lagging behind in terms of regulation and implementation of the Rupbasan. The existence of Rupbasan is regulated in Article 44 of the Criminal Code and Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code which determines that Rupbasan is managed by the Ministry of Justice (now the Ministry of Law and Human Rights). The Ministry of Justice issued the Decree of the Minister of Justice of the Republic of Indonesia Number M.04.PR.07.03. Year 1985 concerning the Organization and Work Procedures of State Prisons and State Confiscated Goods Storage Houses, which was updated with the Decree of the Minister of Law and Human Rights of the Republic of Indonesia No: M.HH.05.OT.01.01 of 2010. The Ministry of Law and Human Rights has the Directorate for the Management of State Confiscated Goods and State Spoils which is tasked with formulating and implementing policies related to the management of confiscated objects and confiscated goods.

On the other hand, the establishment of the KPK Rupbasan was motivated by a joint decision between the Police, the Attorney General, the KPK, the Ministry of Law and Human Rights, the Supreme Court, and the Minister of Finance on the Synchronization of the Implementation of the State Confiscated Goods and State Confiscated Goods System. This decision allows law enforcement officials to build or prepare their own storage areas for state confiscated and state loot if the Ministry of Law and Human Rights Rupbasan does not meet the needs. The KPK Rupbasan, which was established and inaugurated

in 2022 in East Jakarta, is under the Deputy for Evidence Enforcement, more precisely in the Directorate of Asset Tracking, Evidence Management, and Execution (Labuksi). The management of confiscated objects and loot by the KPK is regulated through the Standard Operating Procedure (POB) which is internal and not widely publicized. The absence of the TNI Commander's Decree on Rupbasan in the Military Court environment is inconsistent with Lawrence M. Friedman's theory of the legal system.

4.4. Analysis of the Concept of State Confiscated Goods Storage House in the Military Justice Environment

4.4.1. Analysis of Legal Products on State Confiscated Goods Storage Houses in the Military Justice Environment

Legal products within the TNI are all regulations and decisions made by authorized officials within the TNI and issued in accordance with their duties and functions. The scope of the Commander's Regulation consists of Regulations, Decrees and the preparation of laws and regulations.

Law Number 31 of 1997 concerning Military Courts related to Rupbasan is regulated in Article 93 paragraph (1) where state confiscated objects are stored in a storage house of state confiscated objects within the Military Court, further in Article 93 paragraph (3) delegates that the storage house of state confiscated objects is further regulated by the Decree of the Commander of the TNI, which means that this law gives the authority to the Commander of the TNI to detail the operation and the administration of the storage house is in accordance with the needs of the TNI organization.

The decision of the TNI Commander is one of the scopes of legal products within the TNI, this is stated in Article 3 of the TNI Commander Regulation Number 43 of 2015 concerning the Establishment of Legal Products in the Indonesian National Environment. Regarding the manufacture of legal products, of course, in forming legal products, it is inseparable from Law Number 12 of 2011 concerning the Formation of Laws and Regulations. The author in this case analyzes the delegation given in Article 93 paragraph (3) above, the author argues that the form of legal products about Rupbasan at this time is in the form of Regulations. There are several reasons so that the author concludes to issue a legal product in the form of a regulation, namely, Law Number 31 of 1997 concerning Military Justice was born before Law Number 12 of 2011 concerning the Establishment of Laws and Regulations was promulgated. This means that Law Number 31 of 1997 does not recognize the hierarchy of laws and regulations regulated in Law Number 12 of 2011.

The researcher in this case looks at the Presidential Decree where above the Presidential Decree is a Government Regulation not a Presidential Regulation, at that time the Presidential Regulation did not exist and was not included in the hierarchy of laws and regulations. The Presidential Regulation has also not appeared in the legislative hierarchy in the Decree of the People's Consultative Assembly (MPR) Number III/MPR/2000 in Article 2 which explains the order of the laws and regulations of the Republic of Indonesia, namely:

- 1) 1945 Constitution.
- 2) Decree of the MPR Assembly.
- 3) Law.
- 4) Government Regulation in Lieu of Law.
- 5) Government Regulations.
- 6) Presidential Decree.
- 7) Regional Regulations.

The new Presidential Regulation appears in the legislative hierarchy in Law Number 10 of 2004 concerning the Establishment of Laws and Regulations which explains the types and hierarchy of Laws and Regulations in Article 7, namely:

- 1) 1945 Constitution.
- 2) Government Laws/Regulations in Lieu of Laws.
- 3) Government Regulations.
- 4) Presidential Regulation.

5) Regional Regulations.

Along with its development, this law has been revoked and is no longer valid after Law Number 12 of 2011 was promulgated. This law explains

types and hierarchy of laws and regulations in Article 7 which consist of:

- 1) The Constitution of the Republic of Indonesia in 1945.
- 2) Decree of the People's Consultative Assembly.
- 3) Government Laws/Regulations in Lieu of Laws.
- 4) Government Regulations.
- 5) Presidential Regulation.
- 6) Provincial Regional Regulations.
- 7) Regency/City Regional Regulations.

This law stipulates that the making of laws and regulations must comply with the principles of good regulation formation, one of which is hierarchy. This is in line with the Theory of Legislation introduced by Hans Kelsen, namely *the Stufentheorie* where he argues that legal norms are arranged in layers in a hierarchy, where higher norms apply and are based on even higher norms. This process continues until it reaches the basic norm (*Grundnorm*). Based on the theory mentioned above, the author argues that the legal products issued are in the form of Regulations because the TNI Commander Regulation Number 43 of 2015 concerning the Establishment of Legal Products within the TNI states that the TNI Regulation hierarchy is above or higher than the TNI Commander's Decree.

- b. Based on the nature of legal products, namely Regulations and Decisions. Article 1 paragraph (2) of Law Number 12 of 2011 means "Laws and Regulations are written regulations that contain generally binding legal norms and are formed or determined by state institutions or authorized officials through the procedures stipulated in the Laws and Regulations". Meanwhile, Article 34 of Law Number 30 of 2010 states "Bodies and/or Government Officials who are authorized to determine and/or carry out Decisions and/or actions, one of which is a government body and/or official in the jurisdiction where an individual or a legal entity organization carries out its activities". Prof. Dr. Maria Farida Indrati, S.H., M.H. distinguishes laws and regulations from decisions in terms of their nature where regulations (*Regeling*) is general, abstract, and continuous. On the other hand, decisions are individual, concrete, and final. In theory, there are three cumulative differences between laws and regulations and decisions, namely:

- 1) Laws and regulations are general in nature, which means that the parties affected by legal products are aimed at many people, not only certain people (individuals). If the allocation is to a specific person, then the legal product is a decision (Soeprapto, 2020).
- 2) Laws and regulations are abstract because they are intended to deal with certain legal events. This is different from the characteristics of decisions that are only intended for one legal event.
- 3) Regulations are basically continuous (*einmalig*) which means that due to the law the regulation will continue to apply until it is revoked by other regulations or canceled by a court decision (*judicial review*)

From this explanation, the author concludes that the creation of legal products in the form of Regulations is intended for rules intended in general, while Decisions are intended for individuals or individuals. Associated with the Rupbasan, which is a general storage place for confiscated objects and state spoils, meaning that the regulation is not aimed at individuals or individuals, so the author concludes that the more appropriate legal product issued related to the Rupbasan is the Regulation.

Based on the reasons mentioned above, the author believes that at this time he wants to issue a legal product about Rupbasan in the Military Court environment is the TNI Commander Regulation.

4.4.2. Concept of the TNI Commander's Regulation on State Confiscated Goods Storage Houses in the Military Justice Environment

In the previous part, the author concluded that the legal products that should be issued by the TNI Commander related to Rupbasan are in the form of Regulations so that in making the TNI Commander Regulation is guided by the TNI Commander Regulation Number 43 of 2015 concerning the Formation of Legal Products in the TNI Environment as amended by the TNI Commander Regulation Number 48 of 2018 concerning Amendments to the TNI Commander Number 43 of 2015 concerning the Formation of Legal Products in the TNI Environment. Based on the preparation of the draft of the TNI Commander Regulation, it must be attached with points of thought regarding the importance of the formation of the regulation which includes the introduction, legal basis, background for the preparation of the Commander Regulation, the urgency of the preparation of the Commander Regulation, the subject matter to be regulated and the closing.

The Draft Regulation of the TNI Commander concerning the State Confiscated Goods Storage House within the Military Court is an effort to specifically regulate the procedures for storing, managing, and securing confiscated objects obtained from criminal acts. This study uses a comparative legal method to evaluate and compare the regulation with similar regulations in the general court and the KPK, through this approach the author briefly describes the main things that can be included in the draft TNI Commander Regulation:

a. Position.

Based on Article 93 paragraph (1) of Law Number 31 of 1997 concerning Military Courts, it is stated that Rupbasan is within the Military Court. This implies that the position of Rupbasan is structurally under the Military Court. However, it should be understood that the Military Justice environment does not only consist of the Military Justice institution itself, but also includes other institutions that play a role in the Military Justice process, including the Military Auditorate (Odmil).

Based on legal analysis and comparison, the more appropriate management of Rupbasan in the Military Court environment is by the Inspector General of the TNI (Inspector General TNI). This is based on several considerations:

1) Comparison with the General Court.

In the general judicial system, the responsibility for managing Rupbasan is not held directly by the judicial institution itself, but by the Ministry of Law and Human Rights. The Ministry of Law and Human Rights has the authority and responsibility to handle confiscated objects and state loot with high standards in terms of security, integrity, and supervision. This approach shows that institutions that are specialized and competent in the field of confiscated property management are more effective in carrying out these tasks than the judicial institution itself.

2) Position of the Inspector General of the TNI.

The Inspector General of the TNI is under the TNI Legal Development Agency (Babinkum TNI) and is directly responsible to the TNI Commander. This confirms that the Inspector General of the TNI has authority, responsibility, and structural closeness that allows for effective coordination and supervision in the management of Rupbasan. With clear responsibilities to the TNI Commander through the TNI Babinkum, the TNI Inspector General can carry out the task of managing confiscated objects with high integrity and maintained accountability.

3) Competencies and Experience.

The Inspector General of the TNI has experience and competence in the field of prosecution and supervision in the Military Court. This experience includes the management of confiscated objects during the legal process, which proves that the Inspector General of the TNI has adequate capabilities to manage Rupbasan. So far, the Inspector General of the TNI has carried out the task of storing state confiscated objects and state loot well, showing capacity and reliability in carrying out this function.

4) Efficiency and Effectiveness.

The management of confiscated objects by the Inspector General of the TNI will increase operational efficiency and effectiveness in maintaining the security and integrity of confiscated objects. With the infrastructure and resources at its disposal, the Inspector General of the TNI can ensure that the entire process of storing, securing and maintaining confiscated objects is carried out in accordance with applicable standards. Centralization of management under the Inspector General of the TNI also reduces the risk of misuse or loss of confiscated objects, as well as increases transparency and accountability in the legal process within the TNI.

5) Inter-Institutional Coordination.

The Inspector General of the TNI has a close working relationship with various elements within the Military Court, including the Military Court and the Military Police. This coordination is important to ensure that the entire legal process and management of confiscated objects takes place properly and in accordance with applicable regulations.

Considering the above factors, it can be concluded that the Inspector General of the TNI is more appropriate to manage Rupbasan within the Military Court. This approach is in line with the practice applied in the General Court, where the management of confiscated objects is under a special and competent institution, not under the judicial institution itself. Management by the TNI Inspector General will ensure that state confiscated objects are managed in a professional, transparent, and accountable manner, supporting more effective and efficient law enforcement within the TNI.

The Inspector General of the TNI is under the ranks of the TNI Legal Development Agency (Babinkum TNI). Babinkum TNI is a body tasked with providing legal guidance and guidance within the TNI. In carrying out his duties, the Inspector General of the TNI is responsible to the TNI Commander through the TNI Babinkum.

Based on the explanation above, the author concludes that the position of the Rupbasan can be formulated as a State Confiscated Goods Storage House within the Military Court, hereinafter referred to in this Regulation as the Military Rupbasan is a Technical Implementation Unit in the field of storage of confiscated objects and state loot under the Inspector General of the TNI who is responsible to the TNI Commander through the TNI Babinkum.

Based on a comparison of the law on the rules of the Rupbasan within the General Court and the Corruption Eradication Commission (KPK), it can be concluded that the functions of the Rupbasan within the Military Court are:

1) Carrying out the Administration of Confiscated Goods and State Loot.

Rupbasan is responsible for recording, inventorying, and managing all data on confiscated objects and state loot. This administration includes recording the details of the object, the owner, and the legal status of the object. With good administration, the legal process can run more transparently and accountably.

2) Carrying out Maintenance and Mutation of Confiscated Goods and State Loot.

The Rupbasan is responsible for ensuring that all confiscated objects and state loot are in good condition and maintained. This maintenance includes cleaning, repairing, and storing according to the type and characteristics of the object. The mutation or transfer of confiscated objects is carried out according to procedures to maintain the integrity and safety of the object.

3) Carrying out Security and Management of Rupbasan.

The security of confiscated objects and state loot is the main function of the Rupbasan. This includes strict surveillance, physical security, as well as the use of technology to prevent the loss or misuse of objects. The management of Rupbasan also includes planning, organizing, and controlling all activities related to the storage of confiscated objects.

4) Conducting correspondence and archival affairs.

Rupbasan manages correspondence and archives related to confiscated objects and state loot including the receipt, recording, and storage of related documents, as well as correspondence with other related parties. Good archiving ensures that all documents are available and accessible when needed for legal or administrative proceedings.

This conclusion shows that the main functions of the Rupbasan within the Military Court reflect the same responsibilities as those regulated in the general judiciary and the KPK. These two institutions also regulate the administration, maintenance, security, and archiving of confiscated objects and state loot. Therefore, the implementation of these functions within the Military Court through the Rupbasan is the right step to ensure the management of state confiscated objects effectively, efficiently, and in accordance with applicable legal standards.

b. Classification

Based on the legal comparison and analysis carried out, the classification of the State Confiscated Goods Storage House (Rupbasan) within the Military Court environment is divided into

- 1) Class I Rupbasan.
- 2) Class II Rupbasan.

The author concludes that this is the right step. This conclusion is based on the following factors:

- 1) Comparison with the General Court.

Article 30 of the Decree of the Minister of Justice of the Republic of Indonesia Number M.04.PR.07.03 of 1985 concerning the Organization and Work Procedures of State Prisons and State Confiscated Goods Storage Houses divides Rupbasan into Class I and Class II spread across districts/cities in Indonesia. Currently, there are 64 operational Rupbasan units in the general judiciary, demonstrating the effectiveness of this classification model. This classification helps in the management of confiscated objects and state loot in a more structured and organized manner, according to the needs and workload in each region.

- 2) Comparison with the KPK.

The KPK has one centralized Rupbasan in Jakarta and has no regional representatives. This is different from the need for a more decentralized Military Justice environment and spread across various regions. In the context of Military Justice, the classification of Rupbasan into Class I and Class II allows for more effective management according to the capacity and complexity of each region.

- 3) Classification of Rupbasan in Military Courts.

Based on data from the Supreme Court of the Republic of Indonesia Regulation Number 4 of 2022, there is a classification of courts in the general court and the Military Court. Courts within the general court environment are divided into various types and classes, while courts within the Military Court environment consist of the Main Military Court, the High Military Court, the Type A Military Court, and the Type B Military Court. adjusting to the needs and workload in each region.

- 4) Benefits of Classification.

Classification allows for more precise allocation of resources according to the needs and capacities of each Rubbasan class, improving operational efficiency. With clear classification, capacity and facilities can be adjusted to the volume and complexity of the seized objects in each region, ensuring that all confiscated objects are properly managed. A clear structure will improve coordination between Rupbasan and related agencies in the Military Court, ensuring that the legal process runs smoothly and in accordance with procedures.

Based on the comparison of the law with the general court and the model applied by the KPK, the classification of Rupbasan within the Military Court into Class I and Class II is a strategic and logical step. This will help in the management of confiscated objects and state loot more effectively and efficiently.

5. Conclusions

5.1 Conclusion

Based on the discussion and analysis as described in the previous chapters, the conclusions that the author can describe are as follows:

1. The regulation of the State Confiscated Goods Storage House within the Military Court environment shows that until now there is no specific regulation regulating the existence of the Military Rupbasan. This is due to the fact that the mandate of Article 93 paragraph (3) of Law Number 31 of 1997 concerning Military Courts which delegates rules related to Rupbasan is further regulated by the Decree of the Commander of the TNI. The absence of this decision creates a vacuum that has an impact on the management of evidence in the Military Court environment which is still carried out by the ranks of the Authority. Compared to the Rupbasan under the Ministry of Law and Human Rights and the KPK, the Military Court seems to lag behind in terms of the regulation and implementation of the Rupbasan. The management of confiscated objects at the Ministry of Law and Human Rights and the KPK has been regulated in detail through various standard operational regulations and procedures, while the Military Court still faces legal uncertainty in the management of confiscated objects.
2. A more appropriate TNI legal product to be issued regarding Rupbasan is the TNI Commander Regulation. This is based on the hierarchy of legislation and its nature. The making of the TNI Commander Regulation must be guided by the TNI Commander Regulation Number 43 of 2015 concerning the Formation of Legal Products in the Indonesian National Army as amended by the TNI Commander Regulation Number 48 of 2018 concerning Amendments to the Regulation of the Indonesian National Army Commander Number 43 of 2015 concerning the Formation of Legal Products in the National Army. The issuance of the TNI Commander's Regulation on Rupbasan must take precedence with the draft TNI Commander's Regulation on State Confiscated Goods Storage Houses within the Military Court, which is an effort to specifically regulate the procedures for storing, managing, and securing confiscated objects derived from criminal acts.

The main matters that can be included in the draft TNI Commander Regulation briefly:

a. Position.

The position of the Rupbasan can be formulated by the State Confiscated Goods Storage House within the Military Court, hereinafter referred to in this Regulation as the Military Rupbasan is a Technical Implementation Unit in the field of storage of confiscated objects and state loot under the Inspector General of the TNI who is responsible to the TNI Commander through the TNI Babinkum.

b. Function.

- 1) Carrying out the Administration of Confiscated Goods and State Loot.
- 2) Performing Maintenance and Mutation of Objects
- 3) Carrying out Security and Management of Rupbasan.
- 4) Conducting correspondence and archival affairs.

c. Classification

The classification of Rupbasan within the Military Court environment is divided into:

- 1) Class I Rupbasan.
- 2) Class II Rupbasan.

d. Organizational Structure.

Organizational Structure of Rupbasan in the General Judicial Environment:

1) Class I Rupbasan:

- a) Administration and Maintenance Sub-Section.
- b) Sub-Section of Security and Management of Rupbasan.
- c) Administrative Officer.

2) Class II Rupbasan:

- a) Sub-Section of Administration and Management of Rupbasan.
- b) Security Officer.
- c) Administrative Officer.

- e. The Regulation of the Management of State Confiscated Goods and State Confiscated Goods in the Military Court environment should use the rules that are currently in use, namely the Decree of the Commander of the TNI Number Kep/246/III/2016 dated March 30, 2016 concerning Technical Guidelines for Procedures for Storing Evidence in the Institutional Environment. This rule is still relevant to be used in the management of evidence ranging from receipt, recording, storage,

custody, to expenditure. Thus, the content material should be included in the draft TNI Commander Regulation on State Confiscated Goods Storage Houses in the Military Justice Environment.

5.2. Suggestions

Based on the description above and by paying attention to the main problems raised in this thesis research, the author suggests the following things:

1. The TNI Commander needs to immediately issue a TNI Commander Regulation that specifically regulates the existence and management of Rupbasan in the Military Court. This is important to fill in the gaps in the legal structure and ensure that there is a formal and authoritative institutional framework. Arrangements on Rupbasan in the military judicial environment may adopt best practice (*best practice*) from the Ministry of Law and Human Rights and the KPK in terms of the management of state confiscated objects.
2. The creation of the TNI Commander's Regulation on State Confiscated Goods Storage Houses, it is important to adjust the regulation to current needs and challenges. This can be done by comparing and adopting best practices (*best practice*) from the regulations that regulate Rupbasan in other institutions, such as the Ministry of Law and Human Rights (Kemenkumham) and the Corruption Eradication Commission (KPK). Taking lessons from both institutions can help formulate more comprehensive, effective, and efficient regulations in managing, storing, and securing confiscated objects. In addition, the adjustment of these rules must also pay attention to technological developments and information system integration to ensure accurate and transparent administration. Thus, the TNI Commander's Regulation on Rupbasan will be able to answer operational needs in the Military Justice environment in a more precise and adaptive manner.

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