

Legal Certainty of Criminal Liability for Money Laundering in Corruption Cases Committed by Members of the Indonesian National

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ABSTRACT

The handling of military criminal offenses is essentially different from the handling of general criminal offenses. However, in the handling of special criminal offenses, such as money laundering in corruption cases, it becomes a legal issue in itself, particularly regarding the authority of investigation and prosecution and the determination of the judiciary. Using normative legal research methods, it is proposed that this legal issue requires an integrated scheme for the criminal liability mechanism of money laundering in corruption cases committed by members of the Indonesian National Armed Forces. One approach is to consider placing military investigators at the Corruption Eradication Commission, to accommodate military law principles in handling such cases. Through this mechanism, the handling of corruption and money laundering offenses by military members will be carried out in an integrated manner, providing legal certainty, and creating coherence within the criminal justice system.

INTRODUCTION

Military offenses are actions by military personnel that violate military law and are subject to criminal sanctions (Sahlepi, 2024). The enforcement of military discipline law aims to maintain order in military life, prevent legal violations, and shape soldiers who are loyal to the state through intensive training from basic military education. Members of the National Armed Forces generally have the same status as civilians and do not have a special position in criminal or civil law, including regarding corruption offenses (Sahlepi, 2024). The last amendment to criminal acts 31 of 1999 was made by Act No. 19 of 2019 (hereinafter referred to as the Corruption Crimes Act), aimed at meeting the legal needs of the community as a preventative effort and to combat corruption that harms both the state and the society. Corruption is a part of criminal law that is specialized with the objective of minimizing leaks and irregularities in the financial and economic aspects of the state (Ismaidar, 2021).

The legal issue arising in the handling of corruption offenses involving military personnel is a normative conflict within several laws: Money Laundering act 8 of 2010 (hereinafter referred to as the Money Laundering Act), Military Judiciary Act 31 of 1997 (hereinafter referred to as the Military Judiciary Act), Indonesian National Army (called *TNI*) Act. 34 of 2004 (hereinafter referred to as the Indonesian National Army Act), and Corruption Eradication Commission (called *KPK*) Act 19 of 2019 (hereinafter referred to as the Corruption Eradication Commission Act) (Koran Tempo, 2023a). This is based on the fact that until now, the Military Judiciary Act has not been amended or revised (Fitrianingrum & Badriyah, 2023); hence, the process for handling general and specific criminal cases involving military personnel is conducted by military investigators and prosecutors as stipulated in Article 65 in conjunction with Article 74 of the Indonesian National Army Act.

The conflict of norms will have implications on the legal accountability system for corruption offenses as predicate crimes in money laundering offenses. Therefore, an integrative framework with legal certainty is required to address these legal issues. Legal certainty is a primary requirement in the enforcement of criminal law, as stated in the principal article of the Criminal Procedure Law Code, which declares that no criminal act can be punished unless it has been legally regulated (Wibawa, 2018). It must be recognized that in handling cases of money laundering offenses resulting from corruption crimes, several issues have been identified as previously mentioned; thus, the conflict of norms in criminal law enforcement severely undermines the principle of legal certainty, which comprises *lex scripta*, *lex stricta*, and *lex certa* (Wibawa, 2018).

There have been several corruption cases involving members of the Indonesian National Army, such as the case of corruption in the procurement of the AgustaWestland (AW)-101 helicopters. Other instances include corruption in the misappropriation of funds for purchasing F-16 fighter jets and Apache helicopters during the period 2010-2014, followed by the corruption case involving bribes in the maritime security monitoring satellite project, and most recently, in July 2023, a case of corruption in procurement at the National Search and Rescue Agency (Koran Tempo, 2023b). The handling of this latest case

became controversial due to differences in the handling of corruption offenses between military and civil jurisdictions. Referring back to the history of handling corruption offenses in connectivity matters in the South Jakarta District Court Decision Number 11/Pid.Pra/2001 and the Supreme Court Cassation Decision Number 35K/Pid/2002, the principles of these decisions state that although the position of the Attorney General is the highest enforcer and public prosecutor in a technical sense for handling suspects among civilians, in military circles in connected cases, the Attorney General can only act in carrying out his duties in a non-technical manner (Putusan PN Jakarta Selatan Nomor 11/Pid.Pra/2001 dan Putusan Kasasi Mahkamah Agung Nomor 35K/Pid/2002, 2002).

THEORETICAL REVIEW

Criminal Accountability

Legal accountability can be defined as the responsibility for implementing laws and for rectifying actions that can cause damage (Dyani, 2017). The concept of legal accountability is very broad, therefore, this study focuses only on criminal accountability. Criminal accountability refers to an individual's responsibility for a criminal act they have committed (Melansari & Lewokeda, 2019).

Law Enforcement

Law enforcement is an effort to realize the objectives of law, which are the ideals of justice, certainty, and utility (Anggraeni & Damayanti, 2022). The concept of law enforcement, particularly in Indonesia, tends to lean more towards the enforcement of laws, but essentially, law enforcement is an effort to balance the trinity of values, norms, and behaviors (Solikin, 2019). Thus, the enforcement referred to in this study pertains to the enforcement of legal accountability for money laundering in corruption cases involving members of the Indonesian National Armed Forces.

Legal Certainty

Legal certainty is the harmonization of the application of law and norms within society (Prayogo, 2016). Based on this, legal certainty is a fundamental requirement in the enforcement of criminal law, and legal certainty will provide an integrated criminal justice system to create a just enforcement of criminal law (Maftukhan et al., 2014).

METHODOLOGY

Effective research necessitates a detailed and systematic sequence of steps. Research deemed valid in the scientific community requires precise data collection, accurate analysis, and sustained effort. Within the context of academic writing, this involves the compilation and implementation of data pertinent to the investigated phenomena. To achieve this, the type of research employed is specified as descriptive research. This approach allows for a comprehensive exposition of the subject matter addressed in the thesis, which is subsequently correlated with the existing context, both from fieldwork and literature sources.

This research is normative, discussing doctrines or principles in the field of law. Given its juridico-normative nature, the research methodology is descriptive-analytical, entailing the evaluation of legal principles, norms, doctrines, and judicial decisions. Meanwhile, secondary legal materials include all non-official law publications comprising: a) textbooks discussing penalties for children with mental disabilities, b) legal dictionaries, c) law journals, and d) commentaries on judicial decisions (Risawati et al., n.d.).

RESULTS

Members of the Indonesian National Armed Forces are subject to military criminal law, which is separate from general criminal law. This military criminal law includes both substantive military criminal law and procedural military criminal law (Emmanuel et al., 2019). Military Judiciary Act have absolute jurisdiction over military crimes. However, in cases of corruption involving military personnel, the handling process may involve the interaction of various regulations, such as Article 65(2) of the Indonesian National Army Act, the Military Judiciary Act, the Corruption Crimes Act, and Article 25(4) of the Judiciary Power Act. This indicates the need for coordination to maintain a balance between military criminal law and general criminal law and to ensure justice and transparency in the handling of such cases.

Before discussing the criminal liability of money laundering in corruption cases involving members of the Indonesian National Army, it is crucial to consider data from the 2021 Indonesian Risk Assessment Against Money Laundering Crimes by the Indonesia Financial Transaction Reports and Analysis Center/INTRAC (called *PPATK*). This data indicates that institutionally, both the Indonesian National Army and the National Police (Called *POLRI*) are categorized as having a medium risk in money laundering crimes, with a risk score of 5.44 (Transaksi Pusat Pelaporan dan Analisis Keuangan (PPATK) & 2021, n.d.). This information is essential in depicting the level of risk and potential vulnerability of the military to money laundering offenses, as well as aiding in understanding the complexity of supervision and law enforcement applicable to Indonesian National Army members in corruption cases related to money laundering.

Graph. Assessment of Risk for Money Laundering Offenses

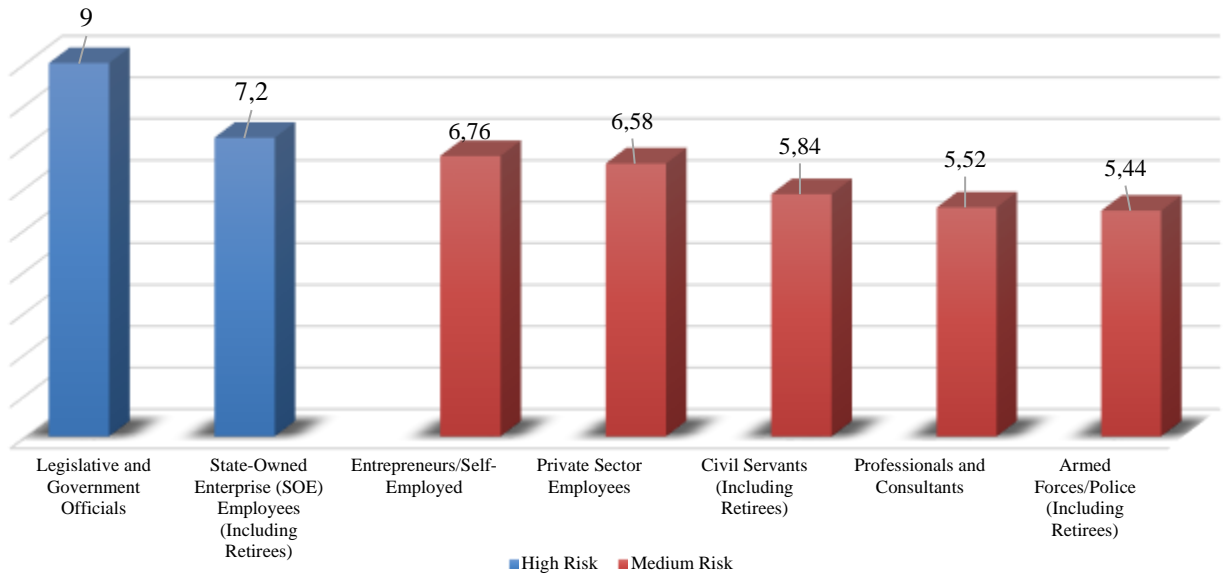


Figure.1 Graph. Assessment of Risk for Money Laundering Offenses

Source: data obtained from *Transaksi Pusat Pelaporan dan Analisis Keuangan (PPATK) & 2021, n.d.*

Based on the data and findings from the Commodity Futures Trading Regulatory Agency and the Financial Transaction Reports and Analysis Centre (PPATK) in 2019, state officials are identified as high-risk profiles for money laundering offenses as perpetrators (PPATK & 2021, n.d.). Furthermore, the latest data from 2023 shows that out of a total of 258 court rulings related to money laundering in that year, 14% were linked to corruption as the predicate offense (Transaksi et al., 2023). This indicates that corruption remains one of the main sources of money laundering cases, although there is a downward trend compared to the previous period (2005 to 2017).

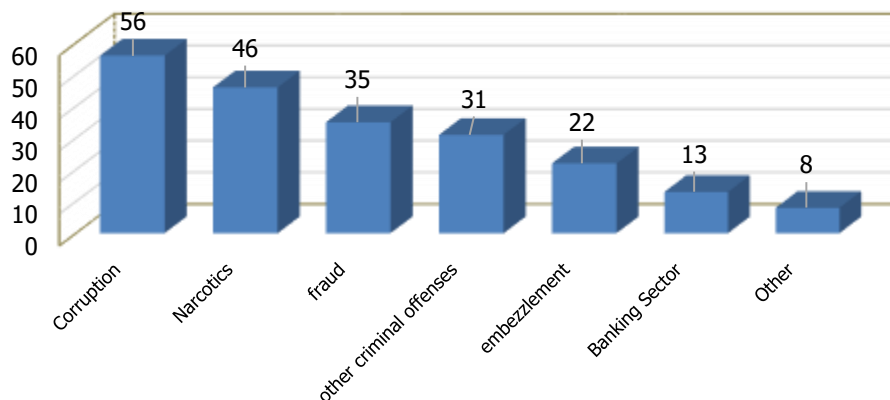


Figure.2 Graph. Cumulative Number of Court Decisions Related to Money Laundering Offenses by Type of Predicate Offense, Period 2005 to 2017

Source: *Tim Riset PPATK. PPATK, T. R. (2018). Tipologi Pencucian Uang: Berdasarkan Putusan Pengadilan Pencucian Uang Tahun 2017. Pusat Pelaporan dan Analisis Transaksi Keuangan*

Based on the data for the period from 2005 to 2017, corruption offenses constituted the highest number of origin crimes compared to other types of criminal offenses, with a total of 56 cases based on court decisions that have become final and binding. This data is consistent with the 2022 decline in Indonesia's Corruption Perceptions Index as reported by Hantoro (Hantoro, 2023) from the Political Risk Service (PRS), which fell by 13 points, the IMD World Competitiveness Yearbook, which dropped by 5 points, and the PERC Asia, which decreased by 3 points compared to 2021.

Regarding the modus operandi in the crime of money laundering in Indonesia, an analysis can be drawn from the interrelation of several variables and typologies (PPATK, 2017). The 2017 Money Laundering Typology Report from the Financial Transaction Reports and Analysis Center concluded that the variables involved in money laundering predominantly include entrepreneurs/self-employed individuals, who are the most frequently reported profile. The most common transactions are cash deposits via tellers, using the Indonesian Rupiah, and predominantly occur within the banking sector. The majority of the funds originate from domestic third parties, and colleagues are the parties often involved. Assets frequently identified in cases of money laundering include cash and motorcycles, while unique transactions encompass transfers via RTGS and the purchase of insurance policies (PPATK, 2017).

Further, a typology associated with money laundering is that transactions using accounts in the names of and owned by other persons are often employed for the proceeds of crime. A unique typology involves the purchase of assets using cash in a foreign currency by criminals to obscure or conceal the origins of the assets, as well as transactions involving luxury goods such as cars, land, and property using their own names. Additionally, there is a "u-turn" typology where funds are transferred to another account and subsequently returned to the original account (PPATK, 2017).

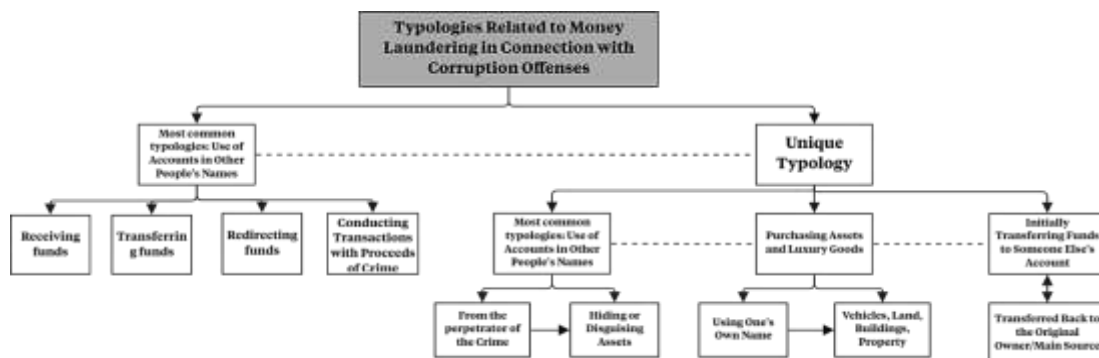


Figure.3 Diagram. Typology Related to Money Laundering in Connection with Corruption Crimes

Souece: Analysis Report on Money Laundering Typology Based on Court Decisions for Money Laundering Criminal Cases. Research Team of the Financial Transaction Reports and Analysis Center (PPATK) 2017. Available at <https://www.ppatk.go.id/publikasi/read/77/tipologi-pencucian-uang-berdasarkan-putusan-pengadilan-tahun-2017.html>

The variables and typologies can generally be grouped into stages of placement, layering, and integration of assets. Placement in money laundering is the initial strategy to introduce illegal funds into the financial system, aiming to disguise the source of the funds. Methods used include depositing funds into banks, insurance, investing in seemingly legitimate businesses, and purchasing valuable goods (Raihan & Sulistiowati, 2021; Reza, n.d.; Joni Emirzon, 2017). Layering is a strategy in money laundering aimed at separating the proceeds of crime from their original source through a series of complex financial transactions. This process includes transferring funds between banks or across countries, using cash deposits as collateral for legal transactions, and moving cash across national borders in shell companies to obscure and erase the trace of the funds' origins (Raihan & Sulistiowati, 2021; Reza, n.d.; Joni Emirzon, 2017).

Integration is the final stage in the money laundering process, where funds that have successfully been disguised as legitimate are viewed as legitimate assets and used for various purposes (Raihan & Sulistiowati, 2021; Reza, n.d.). This can include directly enjoying the wealth, investing in material or financial forms, financing legal businesses, or even funding further criminal activities. In this stage, money launderers are less concerned with cost efficiency or financial gain from the use of funds because the primary goal is to ensure the money appears legitimate and can be used without raising suspicions (Joni Emirzon, 2017). Based on the typology of money laundering crimes, the stages of placement, layering, and integration will definitely involve business entities to disguise the results of money laundering transactions. The same typology also exists in corruption crimes, which are carried out collectively or by more than one perpetrator, as seen from the motives of corruption, including bribery, embezzlement, extortion, fraud, and gratification (Wicipto, 2018).

In handling corruption crimes involving defendants from general and military courts, the Indonesian legal system implements a connectivity court scheme, where the investigation is carried out by the Prosecutor's Office along with the Military Police/Military Auditor. Coordination and control of the investigation in connectivity courts are carried out by the Attorney General of Indonesia or by the Head of the High Prosecutor's Office or the District Attorney's Office at the regional level, and if involving cooperation with the Corruption Eradication Commission, coordination and control are conducted by the Corruption Eradication Commission (Jurio et al., 2019), although so far the Corruption Eradication Commission has never been directly involved in the connectivity court of corruption crimes involving military members (Yunthoe, 2017).



Figure.4 Criminal Corruption Cases in Connectivity Jurisdiction

Source: data obtained from <https://news.detik.com/berita/d-840850/korupsi-heli-mi-17-mantan-jenderal-divonis-4-tahun>
<https://www.cnnindonesia.com/nasional/20240315152948-12-1074782/matolak-kasasi-eks-dirjen-kemenhan-kasus-satelit-vonis-12-tahun>,
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeedccf855b49de87ff303531303334.html>

The potential for corruption in the defense and security sector of Indonesia is classified as high risk according to the Transparency International survey report. This report utilizes 77 indicators divided across five corruption-prone areas: political, financial, personnel, operational, and procurement. In 2013, Indonesia was placed in Category E, which indicates a very high risk of corruption, in contrast to Singapore, which was in Category C. Within the Asia Pacific region, Indonesia is grouped with countries such as Bangladesh, India, Malaysia, and the Philippines. However, there was a significant improvement in 2020 when Indonesia moved up to Category D, indicating a decrease in corruption risk from the previous year (Kasim et al., 2022).

DISCUSSION

Normative Conflict in Criminal Accountability for Money Laundering in Corruption Cases Involving Members of the Indonesian National Armed Forces

Based on the data presented earlier, let's now examine the legal framework for money laundering in Indonesia. Article 2 of Money Laundering Act defines categories that constitute money laundering offenses, which include corruption, bribery, narcotics, psychotropics, and others, including activities in the banking, insurance, and illicit arms trade sectors. This crime applies to actions that are punishable by imprisonment for a minimum of four years, both inside and outside Indonesia, as stipulated in Articles 3 to 10 (Berutu, 2019).

In accordance with Article 74 of the Money Laundering Act, the institution authorized to investigate money laundering cases is the investigative agency for predicate offenses, with categories described in Article 2 of the Money Laundering Act. However, the investigative agencies specified in the explanation of Article 74 of the Money Laundering Act are limited to the Indonesian National Police, the Attorney General's Office, the Corruption Eradication Commission, the National Narcotics Agency (called *BNN*), as well as the Directorate General of Taxes and the

Directorate General of Customs and Excise of the Indonesian Ministry of Finance (Sanjaya, 2015). Whether these institutions are the only ones allowed to conduct investigations into money laundering offenses, the Constitutional Court Decision No. 15/PUU-XIX/2021 states that the explanation of Article 74 contradicts the 1945 Constitution of Indonesia, thereby broadening the interpretation to include all officials or agencies authorized to conduct investigations according to applicable laws (Pusat Pemantauan Pelaksanaan Undang-Undang, 2021).

Handling money laundering crimes associated with corruption offenses still has various legal issues (Surbakti et al., 2018), particularly regarding investigative authority. Article 65 in conjunction with Article 74 of the Indonesian National Army Act stipulates that every National Army soldier is subject to military court jurisdiction as long as there is no amendment to the military judiciary act. On the other hand, Articles 8 and 42 of the Corruption Eradication Commission Act essentially grant the Corruption Eradication Commission the authority to coordinate the investigation of corruption offenses.

Legal Certainty Integration of Criminal Accountability for Money Laundering in Corruption Cases Involving Members of the Indonesian National Armed Forces

The issue of criminal liability mechanisms for money laundering in corruption cases involving members of the Indonesian National Armed Forces depends heavily on the consistency of legal norms in handling the predicate offenses. Article 40(d) of the Money Laundering Act states that the Financial Transaction Reports and Analysis Center (PPATK) is authorized to investigate and analyze reports and information regarding money laundering. PPATK can then forward its findings to law enforcement agencies ((Jessica, n.d.; Fitrianingrum & Badriyah, 2023). The law enforcement referred to here is that which handles predicate crimes. Therefore, in corruption cases involving National Army members, the investigators could include Military Police, Military Prosecutors, the Corruption Eradication Commission, or the Attorney General's Office.

Regarding the conflict of norms previously mentioned, the solution should reflect the integrated spirit of the criminal justice system, as described by Hiroshi Ishikawa (Husin & Husin, 2022), where all elements harmoniously connect like a chain linked to gears. The integrated criminal justice system needs support from a unified set of criminal law norms, so legal certainty and justice (Maftukhan et al., 2014) are reflected in legislation. Beyond formal legal certainty, the criminal justice system (criminal law) should also be oriented towards uncovering material truth (Lengkong, 2019) to ensure fair and accurate court decisions that protect the rights of all involved parties.

The mechanism for imposing criminal liability for money laundering in corruption cases involving National Army members can be executed under the joint court system, given the common practice of money laundering through layering to obscure illicit gains (Joni Emirzon, 2017). This often involves business transactions with civilian entities. Joint courts examine cases where civilians and military personnel are both involved, including general and corruption crimes. For instance, when military and civilian individuals misuse state funds (Jurio et al., 2019). The establishment of permanent joint teams is regulated by Article 89(3) of

the Criminal Procedure Code (called *KUHAP*) and Article 198(3) of the Military Judiciary Act, with implementation governed by the Joint Ministerial Decrees K.10/M/XII/1993 and M.57.PR.09.03/1983. The team leader is tasked with coordinating and overseeing investigations to ensure a smooth and effective process (Mawarni, 2018).

Despite the existence of joint courts for cases involving military and civilian personnel, legal issues often arise regarding who should coordinate and oversee investigations and prosecutions and which court has jurisdiction. Article 42 of the Corruption Eradication Commission Act grants Corruption Eradication Commission the authority to coordinate and oversee investigations and prosecutions in corruption cases, as noted by Bambang Suheryadi in case number 87/PUU-XXI/2023 (Mahkamah Konstitusi RI, 2023).

To resolve jurisdictional issues in joint court cases, the theory of damage assessment can be used to determine the court's role (Pakpahan & Gaol, 2022). This theory was applied in the satellite procurement corruption case and the army housing savings corruption case (Pakpahan & Gaol, 2022). Additionally, considering the extraordinary nature of corruption, its complexity, and the specialized evidence mechanisms involved (Sukmareni et al., 2021), corruption cases involving military personnel outside the scope of National Army financial losses should be handled in specialized corruption courts. This aligns with Articles 8 and 42 of the Corruption Eradication Commission Act, Articles 65 and 74 of the Indonesian National Army Act, and MPR Decree No. VII/2000, which collectively indicate that corruption cases involving military personnel should be handled by general courts, specifically corruption courts.

Therefore, the handling of money laundering crimes related to corruption can be conducted in an integrated and legally certain manner. The integration of the criminal liability mechanism for money laundering in corruption cases involving National Army members requires the competence of corruption courts and the placement of military investigators within the Corruption Eradication Commission to accommodate military legal principles. This will enable integrated handling of corruption and money laundering cases involving National Army members, ensuring legal certainty and unity in the criminal justice system. However, integration should not be merely physical; it must also be procedural. As Edi Setiadi (Setiadi, 2017) noted, an integrated criminal justice system is not just about integration but also the urgency of integrated procedures and justice philosophy. Thus, harmonization between the Military Judiciary Act, Indonesian National Army Act, Corruption Eradication Commission Act, Prosecutor's Office Law, and the Money Laundering Act is needed to establish procedural integration in handling corruption and money laundering cases involving military personnel.

CONCLUSIONS AND RECOMMENDATIONS

The handling of money laundering criminal acts with origins in corruption crimes still faces various legal issues, among others, the legal issue in question relates to investigative authority. The provisions for law enforcement in the Money Laundering Act potentially lead to norm conflicts with the provisions of the Military Judiciary Act in the context of legal accountability of military members in money laundering crimes with corruption crimes. The Military Judiciary Act establishes the Superior Authorized to Punish, certain Military Police officers, and the Auditor as investigators authorized to investigate crimes committed by military members, including general and military crimes. This norm conflict can be observed in the provisions of Article 8, Article 42 of the Money Laundering Act, which fundamentally grants the Corruption Eradication Commission the authority to coordinate investigations of corruption crimes, while on the other hand, Article 65 in conjunction with Article 74 of the Indonesian National Army Act states that every soldier is subject to the jurisdiction of military courts as long as there are no amendments to the Military Judiciary Act. Regarding this legal issue, an integrated scheme for the criminal accountability mechanism of money laundering in corruption cases involving members of the Indonesian National Army is necessary, in addition to the jurisdiction of the corruption crime judiciary, it is necessary to consider placing military investigators in the Corruption Eradication Commission, intended to accommodate military legal principles in the handling. With this mechanism, the handling of corruption and money laundering crimes by military members will be carried out in an integrated manner, providing legal certainty, and creating cohesion within the criminal justice system.

FURTHER STUDY

This study certainly has limitations in discussing the liability for money laundering in corruption cases involving members of the military. Therefore, in line with the changing times and the evolving modus operandi of money laundering crimes, as well as the continuously developing legal needs, it is hoped that future research will discuss the typology of money laundering in corruption crimes.

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