



LEGAL MEASURES TO OVERCOME THE CRIME OF MONEY LAUNDERING COMMITTED BY THE INDONESIAN NATIONAL ARMY (TNI)

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Abstract

The motive for committing the crime of money laundering is one form of modern crime whose existence is very detrimental to national interests, money laundering is a derivative crime from a predicate crime, the motive for committing money laundering is to disguise assets which are the proceeds of crimes so that they appear to originate from legitimate means, making it difficult for law enforcement authorities to make disclosures. As for the discussion that will be discussed in this research, Criminal Responsibility for Military Members Who Commit Money Laundering Crimes and the Efforts Made by the Indonesian National Army in Combating Money Laundering Crimes. The research method used is the Normative Juridical method with a descriptive analysis approach. The results of this research are that accountability for the TNI who commit criminal acts of money laundering must continue to be processed legally as it should be for non-civil society in accordance with the provisions of Law no. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (TPPU) and the efforts made by the TNI to tackle TPPU by improving the financial system within the scope and designing it systematically to avoid TPPU carried out by TNI members themselves.

Keywords: *Legal Efforts, Countermeasures, TPPU*

A. INTRODUCTION

Economic life between one country and another is increasingly interdependent, so that legal provisions in the field of international trade and transnational business are increasingly necessary. Increasingly sophisticated corporate crime, both in form and type and modus operandi, often exceeds national borders (transborder crime) and is also often influenced by other countries due to the era of globalization. The crime of money laundering is a crime that has a distinctive characteristic, namely, this crime is not a single crime but a multiple crime. This crime is characterized by the form of money laundering, which is a crime that is a follow up crime or continuing crime, while the main crime or original crime is called a predicate offense or core crime or there are countries that formulate it as an unlawful activity, namely an original crime that produces money which is then carried out in the laundering process. Various crimes, whether committed by individuals or corporations within the borders of a country or across the borders of other countries, are increasing. The crimes in question can include narcotics trafficking, human trafficking, gambling, illegal arms trafficking, corruption, white collar crime, smuggling, and others. Money laundering or money laundering comes from English where money means money and launderin means laundering. So money laundering means money laundering or whitening the proceeds of crime. The practice of money laundering can be carried out by someone without having to travel abroad.

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This is also based on factors such as technological advances where a payment from a bank can be made electronically or what is called cyberpayment. Perpetrators of criminal acts will deposit the proceeds of crime into several banks through complicated financial transactions where the perpetrators also take advantage of bank secrecy so that the proceeds of crime can be disguised, making it difficult for the authorities to examine the proceeds of crime. According to Law Number 8 of 2010 concerning the prevention and eradication of money laundering, money laundering is anything that meets the criminal elements in accordance with the provisions of this law. Money laundering is an attempt to hide or disguise the origin of money/funds or assets resulting from criminal acts through various financial transactions so that the money or assets appear as if they came from legitimate or legal activities. This started happening in America in 1930, where at that time the crime mafia bought a clothes laundering company as a place to launder money from the proceeds of their crimes, this is where the term money laundering developed.

That is the origin of the name Money Laundering. In general, perpetrators of criminal acts try to hide or disguise the origin of assets resulting from criminal acts in various ways so that the assets resulting from crimes are difficult for law enforcement officials to trace. So that they can freely use these assets for both legal and illegal activities. Therefore, the crime of money laundering (TPPU) not only threatens the stability and integrity of the economic system and financial system, but can also endanger the foundations of social, national and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The losses resulting from the practice of money laundering are so large, therefore efforts to prevent the crime of money laundering have been carried out by various countries. The war on money laundering activities by criminal organizations and by individuals who are not members of criminal organizations has reached a much more serious level than 15 years ago. The first international cooperation body was The Financial Action Task Force on Money Laundering (FATF) which was established by the G 7 Summit in France in July 1989, among other things regarding the expansion of Reporting Parties to include gem and jewelry/precious metal traders and vehicle traders. motorized.

Indonesia itself, in an effort to prevent the crime of money laundering, has issued several laws and regulations in order to suppress the increasing number of TPPU crimes in Indonesia, including Law Number 15 of 2002 concerning the Crime of Money Laundering, Law Number 25 of 2003 concerning Amendments to the Law -Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering and Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. From the explanation above, this research will outline the rules and prevention of money laundering in Indonesia. Technological developments have encouraged an increase in various kinds of crimes both committed by individuals and by corporations within the territorial borders of one country or across the territorial boundaries of other countries: including criminal acts of corruption, bribery, goods smuggling, labor smuggling, immigrant smuggling, banking, illicit trade in narcotics and psychotropic substances, trafficking in slaves, women and children, illicit arms trafficking, kidnapping, terrorism, theft, embezzlement, fraud and various white collar crimes.

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The crime of money laundering is an attempt to hide the origin of assets which are the proceeds of crime by using various methods and inserting them into the financial system so that the assets resulting from crime appear legal. Therefore, so that the proceeds of crime can generate profits in the legal financial system and also maintain the reputation or social status of a person or group, the perpetrators commit the crime of money laundering. According to Munir Fuady, Universal Money Laundering activities today have been classified as a crime which is classified as a White Collar Crime. In the case of the crime of money laundering, the money laundering was carried out clearly using illegal means. Meanwhile, according to Sarah N. Welling, money laundering starts with dirty or illicit money which is achieved through tax evasion and obtaining wealth by breaking the law.

Several types of Money Laundering Crimes in a criminal act use the *ultimum remedium* principle, because the *ultimum remedium* principle is the last resort that must be taken in the judicial process for Money Laundering Crimes. Because the principle of *ultimum remedium* in the crime of money laundering determines the penalty in the law for a criminal act because law enforcement tools or Law Number 8 of 2010 are no longer compatible. The process of criminal acts of money laundering uses the ultimate tool or what is called the *Ultimum Remedium* principle to be able to enforce criminal law and the determination of criminal penalties in the law for certain actions must be in such a way, because law enforcement tools or other sanctions are no longer harmonious, then the *Ultimum Remedium* principle is applied for a particular act. Money Laundering Crime. The principle of *ultimum remedium* is the last resort taken in court proceedings.

The principle of *ultimum remedium* is applied in the crime of money laundering because this principle in criminal law is the ultimate tool for enforcing the law. It is necessary to know that criminal law is the *Ultimum Remedium*, bearing in mind the provisions for formulating criminal threats, the formation of laws must also ask whether other parts of the law have provided sufficient protection for the interests in question, and whether criminal sanctions are really necessary for this. The principle of *ultimum remedium* is also a criminal offense in law for certain actions that must be such, because law enforcement tools or other sanctions are no longer compatible or are not used. The types of criminal acts seen from the *Ultimum Remedium* principle can constitute violations, namely:

- 1) Civil law norms.
- 2) Constitutional law.
- 3) Administrative law.
- 4) Religious law.
- 5) Customary law or customary law.

The principle of *ultimum remedium* is used in a crime of money laundering because there are certain limits in an action that constitutes a violation of legal norms. There is no need for criminal provisions to be implemented, but if it exceeds a certain limit then the principle of *ultimum remedium* needs to be applied for a crime of money laundering. Furthermore, the scope of application of criminal law, whether regarding money laundering or criminal law in general, can apply to every person who commits the crime of money laundering. This can be seen and regulated in Article 2 of the Criminal Code which discusses criminal provisions in laws and regulations in an act. The crime of money laundering in Indonesia applies to every person who commits the crime of money laundering

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within the territory of the Republic of Indonesia. So the criminal provisions in Indonesia apply to all Indonesian residents, both Indonesian citizens and foreigners domiciled in Indonesia.

B. FORMULATION OF THE PROBLEM

1. What is the criminal responsibility for military members who commit the crime of money laundering (TPPU)?
2. What are the efforts made by the Indonesian National Army in combating the crime of money laundering (TPPU)?

C. RESEARCH METHODS

Qualitative research methods, apart from the quantitative research methods created, also require qualitative research methods which require populations and samples. Qualitative normative juridical research is research that refers to legal norms contained in legislation and court decisions as well as norms that live and develop in society. To explain this method, there are several things that need to be explained as follows:

1. Research Type

Legal research generally has normative juridical and empirical juridical types. This normative juridical approach refers to the legal norms contained in legislation and court decisions as well as legal norms that apply in society. Apart from that, by looking at the synchronization of other rules hierarchically, the empirical juridical approach or legal sociology is an approach that looks at the legal reality in society. The legal sociology approach is an approach used to look at legal aspects in social interactions in society, and functions as a support for identifying and classifying non-legal material findings for the purposes of legal research or writing.

2. Data source

- a. Primary data, namely data obtained directly from the source either through interviews, observations or reports in the form of unofficial documents which are then processed by researchers.
- b. Secondary Data, namely data obtained from official documents, books related to research objects, research results in the form of reports, theses, theses, dissertations and statutory regulations. Meanwhile, secondary data can be divided into:

1) Primary Legal Materials

Binding primary legal materials consist of statutory regulations related to the researcher's object of study. For example: the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP), Military Law, Laws. Apart from that, laws that already have permanent legal force are also used as primary legal material.

2) Secondary Legal Materials

Secondary Legal Materials are books and scientific writings or legal articles related to the object of this research.

3) Tertiary Legal Materials

Tertiary Legal Materials are instructions or explanations regarding primary and secondary legal materials originating from dictionaries, encyclopedias, newspapers, magazines, newspapers and so on.

3. Method of collecting data

Library Research Methods: Library data obtained through library research sourced from statutory regulations, books, official documents, publications and research results.

4. Data analysis method

Based on the nature of this research which uses Normative Yiridical research methods, this study uses a qualitative approach to primary data and secondary data.

D. DISCUSSION

1. What is Criminal Accountability for Military Members Who Commit the Crime of Money Laundering (TPPU)

The definition of the crime of money laundering (TPPU) can be seen from the provisions in article 1 of Law Number 8 of 2010 which explains that money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this law. In Article 3 it is explained that the criminal act of money laundering is a form of crime committed either by a person and/or a corporation by deliberately placing, transferring, diverting, spending, paying, donating, entrusting, taking abroad, changing the form, exchanging it for currency. or securities or other actions regarding assets which he knows or reasonably suspects are the result of criminal acts with the aim of hiding or disguising the origin of the assets, including those who receive and control them. The application of criminal provisions in Indonesia as described in Article 3 of Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering which is in force, has been expanded with the principle of expanding the area, namely:

- a. Indonesian Criminal Regulations will apply to criminal acts committed on board Indonesian ships or aircraft while abroad. Criminal provisions in the Indonesian Law apply to every person who outside Indonesia as regulated in Article 4 of the Criminal Code commits a crime as regulated in Article 104, Article 106, Article 107, Article 108, Article 110, Article 111 bis 1st, Article 127 and Article 131 of the Criminal Code which concerns crimes against State security.
- b. Article 7 of the Criminal Code which states that the criminal provisions in Indonesian law apply to Indonesian civil servants, civil servants and the Indonesian national army or Indonesian republican police (PNS and TNI or POLRI) who are outside Indonesia regarding one of the crimes regulated in Chapter XXVIII , book II of the Criminal Code concerning Crimes committed in office.
- c. Article 8 of the Criminal Code applies to the captain of an Indonesian ship who is outside Indonesia committing a crime regulated in Chapter XXIX in Book II of the Criminal Code concerning shipping crimes and Chapter IX in Book III of the Criminal Code concerning Service Violations.

Exceptions in matters regulated in Article 2, Article 5, Article 7, Article 8 of the Criminal Code mentioned above are exceptions recognized by International Law. Article 88 of Law Number 8 of 2010 expands its scope, with the reach of every person (individual or corporation) who outside the territory of Indonesia provides assistance,

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opportunities, facilities and information for the occurrence of a criminal offense as regulated in Article 3 of Law Number 8 The year 2010.

According to the provisions of Article 2 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, the crimes included in the category of Money Laundering are as follows: corruption; bribery; narcotics; psychotropics; labor smuggling; migrant smuggling; in banking; in the capital markets sector; in the insurance sector; customs; excise; human trafficking; illicit arms trade; terrorism; kidnapping; theft; embezzlement; fraud; counterfeiting money; gambling; prostitution; in the field of taxation; in the forestry sector; in the environmental sector; in the maritime and fisheries sector; or other criminal offenses which are punishable by imprisonment for 4 (four) years or more which are committed in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and these criminal acts are also criminal acts according to Indonesian law. Assets that are known or reasonably suspected to be used and/or used directly or indirectly for terrorist activities, terrorist organizations or individual terrorists are equated with the proceeds of criminal acts as intended in paragraph (1) letter n.

The form of punishment for TPPU perpetrators is regulated in Article 3-10 of Law Number 8 of 2010 concerning Prevention and Eradication of TPPU as follows:

- 1) Every person who places, transfers, diverts, spends, pays, gives away, entrusts, takes abroad, changes form, exchanges for currency or securities or other actions on assets which he knows or reasonably suspects are the proceeds of a criminal act as referred to in Article 2 paragraph (1), with the aim of concealing or disguising the origin of assets, is punishable by the crime of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).
- 2) Every person who conceals or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of assets which he knows or reasonably suspects are the result of a criminal act as intended in Article 2 paragraph (1) shall be punished for the crime of laundering. Money with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
- 3) Every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).
- 4) The provisions as intended in paragraph (1) do not apply to Reporting Parties who carry out reporting obligations as regulated in this Law.
- 5) In the event that the criminal act of Money Laundering as referred to in Article 3, Article 4 and Article 5 is committed by a Corporation, the penalty shall be imposed on the Corporation and/or the Corporation's Control Personnel.
- 6) A penalty is imposed on a Corporation if the crime of Money Laundering:
 - a. Carried out or ordered by Corporate Control Personnel

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- b. Carried out in order to fulfill the aims and objectives of the Corporation;
 - c. Carried out in accordance with the duties and functions of the perpetrator or giver of the order;
 - d. Done with the intention of providing benefits to the Corporation.
- 7) The main penalty imposed on a Corporation is a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah). In addition to the fine as intended in paragraph (1), additional penalties may also be imposed on Corporations in the form of:
- a. Announcement of the judge's decision;
 - b. Suspension of part or all of the Corporation's business activities;
 - c. Revocation of business license;
 - d. Dissolution and/or prohibition of the Corporation;
 - e. Confiscation of corporate assets for the state;
 - f. Corporate Takeover by the state.
- 8) In the event that the convict's assets are insufficient to pay the fine as intended in Article 3, Article 4 and Article 5, the fine is replaced by a maximum imprisonment of 1 (one) year and 4 (four) months.
- 9) In the event that the Corporation is unable to pay the criminal fine as intended in Article 7 paragraph (1), the criminal fine is replaced by confiscation of assets belonging to the Corporation or Corporate Control Personnel whose value is the same as the criminal fine imposed. In the event that the sale of confiscated assets belonging to the Corporation as intended in paragraph (1) is insufficient, imprisonment in lieu of a fine is imposed on the Corporation Control Personnel taking into account the fine that has been paid.
- 10) Every person within or outside the territory of the Unitary State of the Republic of Indonesia who participates in carrying out attempts, assistance or criminal conspiracy to commit the crime of money laundering shall be punished with the same crime as intended in Article 3, Article 4 and Article 5.

In money laundering cases, those with authority to investigate this case are the police, the prosecutor's office and finally the Corruption Eradication Commission (KPK), which has been mandated to examine and investigate this case since October 2010. Of the three law enforcers, the one who received the most reports are the police and prosecutors. Another independent institution under the President of the Republic of Indonesia which has the task of preventing and eradicating criminal acts of money laundering is the Financial Transaction Reports and Analysis Center (PPATK). A person is required to report the amount of wealth he owns so that it will make it easier for PPATK to control suspicious transactions. In general, the money laundering process can be grouped into three stages; First, placement, namely efforts to place cash originating from criminal acts into the financial system, especially the banking system. In this process there is physical movement of cash either through smuggling cash from one country to another, combining cash between originating from crimes with money obtained from the proceeds of legitimate activities. According to Adrian, the forms of placement activities include:

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- 1) Placing funds with the bank, sometimes this activity is followed by an application for credit or financing;
- 2) Depositing money with Financial Services Providers (PJK) as credit payments to obscure the audit trail;
- 3) Financing a business that appears to be legitimate from one country to another;
- 4) Financing a business that appears to be legitimate or is related to a legitimate business in the form of credit or financing;
- 5) Purchasing valuable items of high value for personal use, purchasing gifts of high value as appreciation or gifts to other parties whose payment is made through PJK.

Second, transfer (layering), namely an effort to transfer assets originating from criminal acts (dirty money) that have successfully entered the financial system through placement. In this process there is engineering to separate the proceeds of crime from the source by diverting funds from placement to several other accounts with a series of complex transactions. Layering can also be carried out with international network transactions either through legitimate businesses or companies that have a name and legal entity but do not have any activities. The forms of layering activities are:

- 1) Transfers and from one bank to another bank and/or between regions or countries;
- 2) Use of cash deposits as collateral to support legitimate transactions;
- 3) Moving cash across national borders through legitimate business networks or Shell Company.

Third, using assets (integration), namely an effort to use assets originating from criminal acts that have successfully entered the financial system through placement or layering so that they appear to be halal assets (clean money) for halal business activities or to finance criminal activities. Regulation of the crime of money laundering in Indonesia has been regulated juridically in Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. In this case, money laundering can be divided into three criminal acts:

- 1) Active money laundering crime, namely any person who places, transfers, diverts, spends, pays out, gives away, entrusts, takes abroad, changes the form of, exchanges for money or securities or other actions on assets that he knows or reasonably suspects. is the result of a criminal act as intended in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the assets.
- 2) The criminal act of passive money laundering is imposed on every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) . This is also considered the same as money laundering. However, it is excluded for Reporting Parties who carry out reporting obligations as regulated in this law.
- 3) In Article 4 of Republic of Indonesia Law no. 8 of 2010, is also imposed on those who enjoy the proceeds of the crime of money laundering which is imposed on every person who hides or disguises the origin, source location, allocation, transfer of rights or actual ownership of assets which he knows or reasonably suspects are

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the results of criminal acts as intended in Article 2 paragraph (1). This is also considered the same as money laundering.

Sanctions for perpetrators of money laundering crimes are quite severe, starting from a maximum prison sentence of 20 years, with a maximum fine of 10 billion rupiah.

Examples of TPPU cases are: The BNN and TNI have not found common ground regarding the investigation into money laundering in narcotics crimes involving an Indonesian Air Force officer in Riau, Serma Bambang Winarno (BW). Two former Supreme Court justices believe that this happened because there was an error on the part of the law makers, namely the legislature. "The one who is at fault in this case is the law makers, while those affected are the law enforcers. Because as law enforcers they implement what is already in the law -that law," said former supreme judge Prof Dr Komariah Emong Sapardjaja. He made this statement in a presentation at the Coordination Meeting 'Process of Investigating Money Laundering Crimes Suspected of Proceeds from Narcotics Crimes Involving TNI Members', at the BNN Building, Jl MT Haryono, Cawang, East Jakarta, Wednesday (28/8/2013).

The same thing was expressed by former supreme judge Djoko Sarwoko, who has now been asked to become a member of the BNN legal expert group. He said that due to the carelessness of law makers, law enforcers were often hampered by overlapping legislation produced by the legislature. "Implementing this law is a complement to suffering," said the former Supreme Court spokesperson. He is worried that if the obstacles faced by BNN and TNI are not resolved immediately, it will lead to chaos between institutions. "This will be a conflict between institutions," he said. He asked all top institutional officials to meet and discuss this issue under the Coordinating Minister for Political, Legal and Security Affairs so that it does not drag on. "So that we can take a stance in the future that there will be no more friction like this," he said. BW was arrested by authorities last Tuesday (2/7), after receiving a package containing narcotics from his colleague RY at a motorbike repair shop. Officers grabbed him while he was in a car as he was leaving the workshop. BNN obtained 300 ecstasy pills from the sting operation. Meanwhile at his residence, officers confiscated 20 ecstasy pills and 1 kg of methamphetamine. BNN suspects that BW's assets originate from narcotics transactions, namely in the form of a luxury house in Riau, a Nissan X-trail, a motorbike dealer, restaurants and a number of palm oil plantations in Riau.

Officers also confiscated several pieces of evidence from BW's residence, including 3 BPKB motorbikes, 1 Honda Brio car, 2 laptops and a CCTV set. BW and one of his colleagues who is also from the Indonesian Air Force, Serda RY, are suspected of being the devil's pill dealers for several large nightclubs in Pekanbaru. To BNN investigators, BW once joked about the fantastic accounts and billions in assets he had. However, along the way, law enforcement is hampered by existing regulations. In article 74 of Law No. 8/2010, the TNI is not listed as a law enforcer with the authority to carry out TPPU investigations. This is in conflict with Law 31/1997 concerning Military Justice which regulates that all TNI soldiers are subject to military justice and the existing apparatus, namely superiors who give punishments (Ankum), prosecutors and military police. This law also seems to be in conflict with Law 34/2004 concerning the TNI, especially article 65 paragraph 2, which states that TNI soldiers are subject to

general justice if they commit general or specific criminal offenses. The article states that Soldiers are subject to the authority of military justice in cases of violations of military criminal law and are subject to the power of general justice in cases of violations of general criminal law as regulated by law.

2. Efforts Made by the Indonesian National Army in Combating the Crime of Money Laundering (TPPU)

The efforts made by the Indonesian National Army in dealing with the crime of money laundering, the following steps have been and are being implemented.

- a) Redesigning public services, especially in areas that are directly related to daily service activities for the community. The aim is to make it easier for the wider community to obtain professional, quality, timely public services and without being burdened with extra costs/illegal levies. Priority steps are aimed at:
 - 1) Improving the Public Service System;
 - 2) Improving the Performance of Public Service Officials;
 - 3) Improving the Performance of Public Service Institutions; And
 - 4) increased supervision of public services, with priority activities as attached in the matrix.
- b) Strengthen transparency, supervision and sanctions on government activities related to the economy and human resources. The aim is to increase government accountability in managing state resources and human resources as well as providing access to information and various things that provide greater opportunities for the wider community to participate in the economic sector. Priority steps are aimed at:
 - 1) Improving the Financial Management System within the TNI;
 - 2) Improving the Procurement System/Procurement of Goods and Services within the TNI;
 - 3) Improving the TNI HR Management System, with priority activities.
- c) Increase the empowerment of supporting devices in preventing TPPU within the scope of the TNI. The aim is to uphold the principle of "rule of law", strengthen legal culture and empower the community in the process of eradicating corruption. Priority steps are aimed at:
 - 1) Increasing Community Awareness and Participation
 - 2) Completion of Supporting Legal Materials.
- d) It seems that sending TPPU to a correctional institution (prison) is not a deterrent or the most effective way to eradicate TPPU. Moreover, in practice, a correctional institution is actually a place that is no different from a place outside a correctional institution where inmates come from and can pay a certain amount of money to get services and facilities that are no different from services and facilities outside a correctional institution. Therefore, the term correctional institution with luxurious facilities and services emerged. Seeing conditions like this, it is necessary to think of other ways so that people feel embarrassed and think long and hard about committing TPPU. Ways that can be implemented include provisions for announcing decisions that have obtained permanent legal force regarding TPPU cases through the mass media. Apart from providing information to the public, this

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provision also serves as a moral sanction for perpetrators of criminal acts of corruption. Apart from that, it is also necessary to add sanctions for revocation of rights to defendants in TPPU cases. This is very important to provide learning that public office holders are individuals with morals and high integrity.

- e) Law enforcement in the context of eradicating TPPU must be carried out in an integrated and comprehensive manner with one goal, namely to eradicate corruption. Law enforcement human resources must come from selected people and have high integrity. It is time to end the existence of sectoral egos or institutional egos among law enforcement agencies. The state also needs to think about how to ensure that the level of welfare for law enforcers is good, that they are not in need and that they become clean law enforcers.

Efforts to enforce the law through military courts are the last resort (*ultimum remedium*) if the efforts to foster discipline and enforce disciplinary laws that have been carried out by each Commander are no longer able to overcome them. Thus, military courts are a powerful tool in maintaining and improving soldier discipline so that every soldier is always ready to be deployed on any assignment at any time and anywhere.

1. Since the founding of the Republic of Indonesia, the need for Military Justice which is organizationally separate from the General Court has been recognized. There are several reasons why it is necessary to establish a military court that is separate from the general court.
2. Efforts to overcome crime can be broadly divided into two, namely through penal channels (criminal law) and through non-penal channels (not/outside criminal law). Point a is a penalty route, while points b and point c are non-penal routes.
3. Efforts to overcome crime are not solely penal, but are also carried out with non-penal efforts. If a crime prevention policy uses penal measures, its use should be carried out more carefully, sparingly, selectively and limitatively. Efforts to overcome crime through the penal route focus more on the repressive nature (action/eradication/suppression) after the crime occurs, while the non-penal route focuses more on the preventive nature (prevention/deterrence/control) before the crime occurs.

Law enforcement against TPPU, which also applies to original crimes, to this day often leaves problems. Even though Indonesia has criminalized money laundering since 2002, this may be related to money laundering carried out by TNI members. If it is related to the implementation of PPATK's duties, namely analysis or examination of reports and information as intended in Article 40 letter d of the PP TPPU Law, PPATK can forward the results of the analysis or examination to investigators. Then, problems that will arise include if in the analysis report or financial transaction examination results by PPATK it is found that there are indications of money laundering carried out by members of the TNI, which is then submitted to the National Police, while the National Police as investigators of predicate crimes should have the authority to carrying out a TPPU investigation will of course be hampered by regulations related to military justice if the perpetrator is an active TNI member. These obstacles can be caused by disharmony and lack of synchronization of statutory regulations, namely between the Military Justice Law, the TNI Law, and Article 74 of the PP TPPU Law. As

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explained previously, Article 74 of the TPPU PP Law states that TPPU investigations are carried out by predicate crime investigators in accordance with the provisions of procedural law and statutory regulations, unless otherwise determined according to this Law. Meanwhile, the Elucidation to Article 74 states that what is meant by "predicate crime investigator" is an official from an agency that is authorized by law to carry out investigations, namely the National Police, Prosecutor's Office, KPK, BNN, as well as DJP and DJBC. Predicate crime investigators can carry out TPPU investigations if they find sufficient initial evidence of TPPU occurring when conducting predicate crime investigations in accordance with their authority. Meanwhile, the Military Justice Law regulates procedural law for members of the TNI, especially in cases of committing criminal acts, starting from the stages of investigation, prosecution, examination in court, up to the implementation of court decisions which are regulated separately. This is in accordance with the provisions of article 69 paragraph (1) investigators in the military environment are:

- a. Superiors have the right to punish; In the general explanation of Republic of Indonesia Law No. 37 of 1997 concerning military justice, it is known that the investigative authority vested in superiors who have the right to punish is not exercised by themselves, but is carried out by Military Police Investigators and/or Prosecutors.
- b. Military police; A military police investigator is an official who has been delegated authority from the Commander in Chief as a superior who has the right to impose the highest punishment to carry out investigations into criminal acts committed by soldiers.
- c. Prosecutor; investigative actions that can be carried out by military prosecutors are investigations that are carried out from the start by the prosecutor himself on the orders of the prosecutor general, both for general criminal offenses and for specific criminal offences. In fact, the idea of subjecting TNI members who commit general crimes or non-military crimes under the authority of the general court has been mandated in the provisions of Article 65 paragraph (2) of the TNI Law which states that "Soldiers are subject to the power of military justice in cases of violations of military criminal law and subject to the power of the general judiciary in cases of violations of general criminal law regulated by law".

However, it is noted that the validity of the provisions of this article is determined conditionally as regulated in Article 74 of the TNI Law, namely: (1) The provisions as intended in Article 65 apply when the new law on Military Justice comes into force. (2) As long as the new military justice law has not been established, it remains subject to the provisions of Law Number 31 of 1997 concerning Military Justice. Furthermore, considering that the new military justice law has not yet been formed, if it is related to all kinds of criminal acts committed by members of the TNI, whether general crimes or military crimes, the person with authority to carry out investigations is an investigator from the TNI. The implementation of the substance in the TNI Law only has binding legal force after the Military Justice Law is amended and the new Military Justice Law is implemented. Thus, legal certainty is a very important

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essence in law in order to achieve the main goal of law, namely justice. According to Fence. M. Want to measure or criteria for legal certainty itself can be formulated, among others:

- a. There is legal clarity, meaning it can be easily understood by the people;
- b. These legal rules do not conflict with each other
- c. Legal rules must not require behavior beyond the capabilities of the legal subject, meaning that the law must not order something that is impossible to do;
- d. Recognition of the rights and obligations of each legal subject;
- e. There is recognition from the principal state of the legal rules;
- f. Legal certainty in court matters is characterized by the judge's independence and impartiality in applying legal rules;
- g. Legal certainty in court is determined by the clarity of the object in dispute;
- h. Legal certainty in court must clearly determine the object won by the parties in the case;
- i. Legal certainty in court determines whether a decision can be executed or enforced. In accordance with Article 28D paragraph (1) of the 1945 Constitution which states "Everyone has the right to recognition, protection and fair legal certainty as well as equal treatment before the law.

This reflects that law enforcement efforts should be carried out without discrimination against any citizen who violates the law. According to Philipus M. Hadjon, authority that originates from statutory regulations is obtained in three ways, namely:

- a. attribution;
- b. delegation;
- c. mandate.

According to Hans Kelsen, the positivist face of the validity of a legal norm relates the validity of the legal norm to its conformity with the system of legislation in force with the basic norms (constitution) of a country.

Furthermore, according to Hans Kelsen, if there are two legal rules that contradict each other, of course in this case only one rule applies. Thus, if there are contradictory legal rules, several theories are needed, including:

- a. Specific law overrides general law;
- b. The new law overrules the old law;
- c. Laws of a higher degree overrule lower laws;
- d. Laws that are more concerned with the public interest overrule laws that are less concerned with the public interest;
- e. Looking for the law that is most in accordance with basic norms (constitution).

E. CLOSING

a. Conclusion

- 1) The form of punishment for TPPU perpetrators is regulated in article 3-10 of Law Number 8 of 2010 concerning Prevention and Eradication of TPPU, namely every person who places, transfers, diverts, spends, pays, gives, entrusts, takes abroad,

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changes form, exchanges for currency or securities or other actions on Assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) with the aim of concealing or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah). According to the provisions of Article 2 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, the crimes included in the category of Money Laundering are as follows: corruption; bribery; narcotics; psychotropics; labor smuggling; migrant smuggling; in banking; in the capital markets sector; in the insurance sector; customs; excise; human trafficking; illicit arms trade; terrorism; kidnapping; theft; embezzlement; fraud; counterfeiting money; gambling; prostitution; in the field of taxation; in the forestry sector; in the environmental sector; in the maritime and fisheries sector; or other criminal offenses which are punishable by imprisonment for 4 (four) years or more which are committed in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and these criminal acts are also criminal acts according to Indonesian law. Assets that are known or reasonably suspected to be used and/or used directly or indirectly for terrorist activities, terrorist organizations or individual terrorists are equated with the proceeds of criminal acts as intended in paragraph (1) letter n.

- 2) The efforts made by the Indonesian National Army in dealing with the crime of money laundering, the following steps have been and are being implemented.
 - a. Redesigning public services,
 - b. Strengthen transparency, supervision and sanctions on government activities related to the economy and human resources.
 - c. Increase the empowerment of supporting devices in preventing TPPU within the scope of the TNI.
 - d. Law enforcement in the context of eradicating TPPU must be carried out in an integrated and comprehensive manner with one goal, namely to eradicate corruption.

b. Suggestion

- 1) Optimizing public services within the Indonesian National Army regarding finances in terms of procurement and expenditure, all TNI members must always report their assets to the LHKPM to avoid criminal acts of money laundering.
- 2) Members of the Indonesian National Army must continue to adhere to the values of Nationalism so that they do not arbitrarily commit criminal acts of money laundering which harm the state's finances.

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