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Competence of The Authority of Military Police Investigators on Money Laundering Criminal Cases in Connection Cases

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Abstract: The investigation of money laundering cases against connexity cases whose perpetrators are "unscrupulous" Indonesian National Army and civilians, currently there is a Constitutional Court Decision No. 15/PUU-XIX/2021 which provides legal certainty for Military Police Investigators to be able to investigate money laundering criminal case against "unscrupulous" Indonesian army who are included as "justiabelen" within the scope of military justice. Previously, the money laundering criminal case could not be continued due to the existence of the Explanation of Article 74 of Law No. 8 of 2010 concerning the Prevention and Eradication of Laundering Crimes. The purpose of this study is to determine and analyze the competence of the authority of military police investigators in the case of money laundering crimes in connexity cases. This research is a descriptive normative legal research, using a statutory approach and a case approach. The results of the study concluded that the Military Justice law can override general laws. The competence of the investigative authority carried out by the Military Police Investigator in the money laundering criminal case against the investigation of the concurrency case can be carried out based on the Decision of the Indonesian Constitutional Court No. 15 / PUU-XIX / 2021, where the Military Police Investigator has obtained mandatory authority based on the law.

.**Keyword:** Competence Authority, Military Police Investigator, Money Laundering Case.

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1. Introduction

Based on the legal system, structurally who conducts investigations into the crime of money laundering as a predicate crime can be seen in the Explanation of Article 74 of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, that "Investigators of Criminal Acts of Origin are officials of agencies authorized by law to conduct investigations, namely: The Indonesian National Police; the Attorney General's Office; the Corruption Eradication Commission; the National Narcotics Agency; and the Directorate General of Taxes and the Directorate General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia". The connection with this paper is that there are cases involving "unscrupulous" members of

the Indonesian National Army who commit the crime of money laundering, which raises a question of who is authorized to investigate. Meanwhile, Military Police Investigators are not mentioned in the Explanation of Article 74 of Law No. 8/2010..

Normatively, the competence of military police investigators within the scope of Military Justice is to carry out investigations of perpetrators of "justisiable" criminal acts of Military Justice regulated in Article 1 number 11 jo. Article 69 paragraph (1) of Law No. 31 of 1997 concerning Military Justice, it is stated that Investigators of the Armed Forces of the Republic of Indonesia, hereinafter referred to as Investigators, are the Punishable Superiors (Ankum), certain Military Police Officers, and Oditur, who are specifically authorized by Law No. 31 of 1997 concerning Military Justice to conduct investigations ". Article 69 paragraph (1) explains that "Courts within the military justice environment have the authority to try criminal acts committed by someone who at the time of committing a criminal act is a Soldier; who based on the law is equated with a Soldier; Member of a class or service or agency or who is equated or considered as a Soldier based on the law; and Someone who does not fall into the categories in letters a, b, and c but by decision of the Commander with the approval of the Minister of Justice must be tried by a Court within the military justice environment."

Crimes committed by unscrupulous members of the Indonesian Army in its development are increasingly varied influenced by the development and progress of science so rapidly, and accompanied by economic development which is inseparable from the emergence of new modes of crime. Among these modes of crime are money laundering crimes that do not rule out the possibility of being committed by members of the Indonesian army who are justisiable military justice. In the process of following up on money laundering crimes committed by members of the Indonesian army, problems arise in the authority of the investigator handling the case, namely the absence of mention of Military Police Investigators authorized, or not, in conducting investigations into money laundering crimes.

As a case study, the original criminal case in the form of corruption combined with money laundering involving unscrupulous members of the Indonesian army can be seen in Police Report No. LP-11/A-XII/2015/Puspomad, dated December 04, 2015 and Case File No. BP-03/A-03/V/2015/Puspomad, dated May 27, 2016 An. Tk. Indonesian Army Brigadier "T.H" has been decided by the Supreme Court in Decision No. 363K/MIL/2017 jo. Decision of the High Military Court II Jakarta No. 23-K/PMT-II/AD/VII/2016 An. Defendant "T.H".

The case of the crime of origin in the form of corruption committed by Mr. "T.H" began when the Defendant "T.H", was still a Colonel and served as Head of the Financing Implementation Division (Kabidlakbia) of the Ministry of Defense for the 2010-2014 Period. Based on the Decree of the Commander of the Indonesian Army, dated December 31, 2013, the Defendant was promoted to become the Director of Finance of the Indonesian Army Headquarters with the rank of One Star General or Brigadier General, until now. As treasurer, the Accused had the task of managing foreign exchange funds issued by the State Budget at the Ministry of Defense and funds from completed activities were accounted for. However, in reality the activities had not been

completed. To support the implementation of his duties in the payment of state budget expenses, the Defendant opened + 40 (approximately forty) bank accounts. These accounts should have received approval from the Minister of Finance as the State General Treasurer, but only 8 (eight) accounts received approval, while the remaining 32 (thirty-two) accounts have not received approval.

During his one-year tenure as Head of the Head of Operations and concurrently as Special Treasurer of Bialugri (Foreign Exchange) of Pusku Ministry of Defense, the Defendant received state budget money from the Director General of Defense amounting to Rp. 5.4 trillion. The money was supposed to be used for the procurement of goods and capital expenditures whose sources of funds used foreign exchange in accordance with the Minister of Defense Authorization Decree (SKOM). The money was exchanged into foreign currencies, such as USD, AUD, EUR, GBP and SGD, by Bialugri staff on the orders of the Defendant. As needed, it was then deposited in an escrow account in the name of the Defendant for the deposit of the "Letter of Credit" (L/C) guarantee of Bialugri Pusku Ministry of Defense. After the foreign exchange funds were in the accounts of Bank BRI, Bank BNI and Bank Mandiri, at the Defendant's own discretion without observing the laws and regulations, the Defendant spent the money for other purposes outside of his main duties and functions that were not in accordance with his designation.

Furthermore, the Defendant provided loans to third parties or partners, namely: PT Medal Alamsari (MAS) amounting to USD. 11 million. However, due to regulatory constraints, Witness "D.H" appointed PT. MAS to distribute the funds to the counterparties as recommended by the Defendant. Witness "D.H", agreed for his company to be used to channel funds from Falcon to be given to partners who were sent to PT. MAS' account through HSBC Bank in London. The Director of PT MAS then made a financing cooperation agreement with a partner who had received a contract within the Indonesian Army. PT. MAS as the money giver gave the counterparty 85% of the total value of the contract. In short, Witness "D.H", submitted an application for an L/C to the bank, then Defendant "T.H", gave a letter of authorization to the Head of Bank BNI Menteng and Bank BRI Cab. Kramat, Jakarta to block USD funds in Bialugri's Special Treasurer Account as collateral for the opening of the L/C by PT MAS. After the L/C documentation process, Falcon transferred the funds to PT. MAS deducted by Falcon's financial cost. Furthermore, PT. MAS transferred the funds to the accounts of 24 partners or suppliers.

The defendant "T.H" again provided loans to partners who carried out the work of purchasing goods and services within the Indonesian Army and the Ministry of Defense of the Republic of Indonesia, which was distributed by himself in the form of Cost Collateral Credit (C3). The money he spent reached USD. 6 million with an account belonging to the Special Treasurer of Bialugri. Furthermore, after receiving the payment of the contract from the buyer, the partner returned the loan to PT MAS and some returned directly to the Defendant "T.H", at the request of the Defendant; For his actions, the Defendant has issued a total of USD. 18 million. The Defendant took a fee/percent of the loan given to the counterparty. The money was also returned by the

counterparties to the defendant's personal account. There are also some partners returning directly to the account of the Special Treasurer of Bialugri (Foreign Exchange) Pusku Ministry of Defense, while some have not returned or are still with the partners.

In short, for the defendant's actions, the High Military Court II Jakarta sentenced the defendant "T.H" to life imprisonment in a corruption case of defense equipment funding at the Indonesian Ministry of Defense. The defendant was found legally and convincingly guilty of committing a criminal act of corruption jointly in the payment of the purchase of F-16 Aircraft to Apache Helicopters with state financial losses reaching USD. 12.4 million. Based on the course of corruption cases committed by unscrupulous members of the Indonesian Army, the law can also apply the article on money laundering if sufficient preliminary evidence is found that a criminal act of money laundering has occurred. In accordance with the provisions in Article 75 of the Anti-Money Laundering Law: "In the event that the Investigator finds sufficient preliminary evidence of the occurrence of a money laundering crime and the crime of origin, the Investigator combines the investigation of the crime of origin with the investigation of the crime of money laundering and notifies the Financial Transaction Reports and Analysis Center.

Based on the provisions of Article 75 of Law No. 8 of 2010 concerning ML, the Investigator has the authority to combine the two cases into one case file, and Article 75 is also used as the basis for Military Police Investigators to combine the two cases into one file. When the case file was submitted to the High Military Oditur II-Jakarta some time later the case file was returned to the Military Police Investigator with instructions that the corruption crime case (the original crime) be separated from the money laundering crime (splitsing).

This condition occurs due to the Explanation of Article 74 which does not include the Military Police Investigator authorized to investigate money laundering crimes, in addition to this, the Explanation of Article 74 also contradicts Article 74 of Law No. 8 of 2010, resulting in disharmony between Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes and other laws, so that it does not meet the principles of the formation of laws and regulations as referred to in Article 5 of Law No. 12 of 2011, especially in letter c (conformity between types, hierarchy, and content material) and letter d (can be implemented). The disharmony is caused by the absence of synchronization with other laws and regulations, or there is a political interest in criminal law by the House of Representatives (DPR-RI) which has the authority to form legislation (Marbun, 2014).

Based on this description, the legal issue that arises in this study is that the Constitutional Court Decision Number 15/PUU-XIX/2021 has opened up opportunities for Military Police Investigators in handling money laundering criminal case. However, what about the perpetrators who are subject to the General Court who cooperate or participate or assist in committing these criminal acts.

The purpose of the establishment of the Judiciary is to realize legal certainty and justice and when there is a criminal offense involving perpetrators who are subject to the

General Court and Military Court in a criminal event then the legal process is carried out separately, can it guarantee a sense of justice. This study tries to examine and analyze the core problem of this research, namely the opportunity to solve the problem is to take advantage of the handling of cases through the examination of connexity events that have been mandated, both in the Criminal Procedure Code, and Law No. 31 of 1997 concerning Military Justice. Based on the Criminal Procedure Code and Law No. 31 of 1997 concerning Military Justice, Presidential Regulation No. 15 of 2021 concerning the Second Amendment to Presidential Regulation No. 38 of 2010 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia has been issued. In accordance with Article 25A (1) the Deputy Attorney General for Military Criminal Affairs is an element of the leadership in carrying out the duties and authorities of the Attorney General's Office in the field of technical coordination of prosecution carried out by the prosecutor's office and handling of cases of connexity, responsible to the Attorney General. Based on the description in Article 25A of Presidential Regulation No. 15 of 2021 concerning the Second Amendment to Presidential Regulation No. 38 of 2010 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia, it opens up opportunities in handling cases carried out through the handling of connectivity cases.

2. Research Method

This research is a descriptive-analytical normative research. The approaches used are statute approach and case approach. The data used are primary data and secondary data. Primary data was obtained from field study techniques through interviews with Military Police Investigators and High Military Oditurat II-Jakarta who handled the case of the Defendant "T.H". Primary data includes primary, secondary, and tertiary legal materials obtained by literature study techniques. Furthermore, the data is analyzed using qualitative analysis method.

3. Result and Discussion

After the Decision of the Constitutional Court of the Republic of Indonesia Number 15/PUU-XIX/2021, dated June 29, 2021, the Investigators of Crimes of Origin are not limited to 6 (six) agencies authorized by laws and regulations to conduct investigations as referred to in the Explanation of Article 74 Anti-Money Laundering Law.

The decision granted the Petitioners' request in its entirety. Stating that the Explanation of Article 74 of the Money Laundering Crime Law in the sentence referred to as 'investigators of criminal acts of origin' are officials from agencies authorized by law to conduct investigations, namely: The Indonesian National Police, the Attorney General's Office, the Corruption Eradication Commission, the National Narcotics Agency, as well as the Directorate General of Taxes and the Directorate General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia' is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as 'What is meant by 'investigators of criminal acts of origin' are officials or agencies authorized by legislation to conduct investigations."

The Petitioners are Cepi Arifiana and M. Dedy Hardinianto as the Petitioners are civil servant investigator from the Ministry of Environment, while Garribaldi Marandita and Mubarak are civil servant investigator from the Ministry of Fisheries and Marine Affairs. The Plaintiffs argued that the Explanation of Article 74 of the Money Laundering Crime Law is contrary to Article 24(1), Article 27(1), and Article 28D(1) of the 1945 Constitution of the Republic of Indonesia. According to the Plaintiffs, the norm has limited the original investigators authorized to investigate money laundering crimes to investigators from 6 (six) agencies. In addition, the Plaintiffs also considered that the norm also resulted in differential treatment of those authorized to investigate money laundering crimes and those suspected of committing money laundering crimes. In this case, the Plaintiffs who are civil servant investigator get unequal treatment with the Police, Corruption eradication commission, and others to carry out money laundering crimes originating from all money laundering crimes to all civil servant investigator.

In its legal reasoning, the Court is of the opinion that the phrase "originating criminal investigator" in Article 74 of the Anti-Money Laundering Law provides the understanding that the originating criminal investigator is an official of the agency authorized by law to conduct investigations in accordance with the provisions of procedural law and statutory provisions. In this case, all Investigators who investigate the original criminal offense or criminal offense which later gave birth to the criminal act of money laundering. In other words, the investigator of the crime of origin is any official who is authorized by law to investigate a criminal offense which later results in a money laundering crime as referred to in Article 2 paragraph (1) of the Anti-Money Laundering Law. Thus, it has been clearly and unequivocally (expressis verbis), there is no exception whoever the official who investigates a criminal offense because of the law's order which then gives birth to the crime of money laundering is the investigator of the original criminal offense.

The fundamental reason for the irrelevance of the separation between the investigation of the crime of origin and the investigation of the criminal act of money laundering was born. The reason for the unification of authority will facilitate proof and gain efficiency in handling a case. Because there is no need for the stage of submission to other investigators (the Indonesian National Police) by splitting, which of course will go through a process that takes time and may have to carry out the investigation process from the beginning of the money laundering crime, except for coordination when the case file will be submitted to the public prosecutor as referred to in Article 7 paragraph (2) of the Criminal Procedure Code.

Such repetitive stages will not be in line with the principles of simple, speedy and low cost justice as stated in Article 2 paragraph (4) of the Judicial Power Law. Moreover, the investigator of the original crime is actually the one who better understands the character of the case he is handling. With the aforementioned legal considerations, the Explanation of Article 74 of the Anti-Money Laundering Law, which does not justify the existence of an investigator of the crime of origin who is not necessarily attached to the authority to investigate money laundering crimes as long as the crime of origin includes criminal acts as regulated in Article 2 paragraph (1) of the Anti-Money Laundering PP

Law - in addition to 6 (six) investigating institutions - as stated in the Explanation of Article 74 of the Anti-Money Laundering PP Law is an unjustified restriction.

Moreover, the Money Laundering Crime Law stipulates that if in the course of the investigation it is found that there is a criminal act of origin and a criminal act of money laundering, then the investigator combines the investigation of the criminal act of origin with the criminal act of money laundering by notifying Financial Transaction Reports and Analysis Centre (vide: Article 75 of Law 8/2010). This is actually in line with the message of the essence of efficiency as well as in the context of realizing simple, fast and low cost justice, as previously considered.

Then, the Elucidation of Article 74 of the Anti-Money Laundering Law has clearly narrowed the definition of "investigator of the crime of origin" as stated in the provisions of Article 74 of the Anti-Money Laundering Law by limiting the legal subjects who are entitled to become investigators of the crime of origin. In addition to narrowing the definition of "original criminal investigator", the Elucidation of Article 74 of the Anti-Money Laundering Law shows discrimination in handling money laundering crimes, especially for civil servants. This is because, technically and substantially, if the investigation of money laundering is carried out by the Investigator of the original crime, the investigation will be able to quickly carry out the handling of the alleged money laundering crime as well as the original crime. Therefore, the investigator of the original crime who discovers the criminal act of money laundering must be authorized and therefore the Explanation of Article 74 of the Anti-Money Laundering Law is declared unconstitutional.

Based on the court's legal considerations, Military Police Investigators also have the same authority as civil servant investigator Investigators in the context of investigating money laundering crimes. The condition is that the Military Police Investigator is the Investigator of the Original Crime as stipulated in Article 2 paragraph (1) of the Money Laundering Crime Law. So, in the context of corruption crimes investigated by Military Police Investigators, these investigators can also investigate and investigate money laundering crimes.

The competence of the investigation authority carried out by the Military Police Investigator in a money laundering case against the investigation of a concurrent case after the issuance of the Constitutional Court Decision Number 15/PUU-XIX/2021 can be carried out, because the Military Police Investigator has mandatory authority based on the law, thus providing legal certainty in law enforcement of money laundering crimes. In the context of a case study of a corruption crime that has been legally binding (inkracht) based on the Indonesian Supreme Court Decision No. 363K / MIL / 2017, dated September 20, 2017, followed by an investigation into a money laundering criminal case, the money laundering criminal case has the potential to be used as a "role model" for law enforcement in money laundering criminal case whose handling is carried out through a connexity case investigation.

A connectivity case or connectivity criminal offense is a criminal offense committed by a person/civilian together with a member of the military. The person/civilian should be

tried by the General Court, while the military member should be tried by the Military Court. The reason why members of the military must be tried in the Military Court is because it is related to the security of the state itself. The connectivity examination or connectivity trial is a mechanism applied to criminal offenses, because there is participation, either participating (deelneming) or together (made dader) involving civilian perpetrators and perpetrators who are members of the military (Ariman, 2015).

In handling the money laundering criminal case concurrency case after the Decision of the Indonesian Constitutional Court No. 15/PUU-XIX/2021, dated June 29, 2021, the investigation conducted by the Military Police Investigator on the money laundering crime case can be carried out as described previously, then if the money laundering crime case is committed by people who are justiable in the general court and military court, then it is carried out by investigating the concurrency case. The handling of cases carried out by connexity which has been regulated in the Criminal Procedure Code, Law No. 31 of 1997 concerning Military Justice and Presidential Regulation of the Republic of Indonesia No. 15 of 2021 concerning the Second Amendment to Presidential Regulation No. 38 of 2010 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia is certainly not finished only until the issuance of the law or regulation, but requires continuation in building a system that accommodates every interest in the law and the interests of its implementation.

It's difficult for the money laundering connexity case to be enforced. In order to realize the comprehensive handling of connectivity cases, forward thinking and sensitivity to the dynamics of the emergence of potential problems that can be used as legal loopholes for suspects/defendants from the formation of the Team to the handling of connectivity cases, and how the application of the investigation. In order to eliminate the potential legal problems that can arise, legality is required in every application of the investigation. The first principle of article 1 paragraph (1) of the Criminal Code which reads: "Criminal law must originate from the law". It is also called the principle of legality, meaning that punishment must be based on the law (lege). What is meant by law here is in a broad sense, namely not only what has been written in the form of laws made by the Government and the DPR, but also other legislative products such as government regulations in lieu of laws, government regulations, Presidential Decrees, other implementing regulations such as ministerial regulations, Governor / Regional Heads and so on (Sianturi, 2022).

The rules in criminal procedural law are in principle the same as the rules contained in Law No. 31 of 1997 concerning Military Justice precisely in Article 198, Article 199, Article 200, Article 201, Article 202 and Article 203. The results of the examination of the connectivity case are the results of the investigation and investigation conducted by the Joint Investigator. The results of the investigation and investigation are carried out in accordance with the provisions of the Criminal Procedure Code, starting from: investigation - prosecution - trial in court. The results of the investigation and investigation which are the results of the examination of the concurrency case also adhere to the principle of "pro justitia", so that the results of the examination of the concurrency case by the Joint Investigators are "for justice". In context, the Joint

Investigator must also submit to the Attorney General in accordance with the establishment of Jampidmil based on Presidential Regulation No. 15 of 2021 concerning the Second Amendment to Presidential Regulation No. 38 of 2010 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia. The Perpres essentially regulates the duties and authorities of the Deputy Attorney General for Military Crimes.

4. Conclusion

Based on the research and discussion above, it is concluded that the issuance of the Constitutional Court Decision No. 15/PUU-XIX/2021 which states that the explanation of Article 74 of the Anti-Money Laundering Law is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as "What is meant by 'Investigator of Criminal Acts of Origin' is an official or agency that is authorized by statutory regulations to conduct investigations. This means that the Constitutional Court Decision above has opened up opportunities for Military Police Investigators to conduct investigations into money laundering cases. From the description above, the competence of the investigative authority carried out by Military Police Investigators in ML cases committed by Indonesian army personel and in the investigation of connexity cases after the issuance of the Indonesian Constitutional Court Decision No. 15 / PUU-XIX / 2021 can be carried out, because Military Police Investigators have mandatory authority based on the law, thus providing legal certainty in law enforcement of money laundering crimes. In the context of a case study of corruption of defense equipment procurement funds that has been legally binding (inkracht) based on the Indonesian Supreme Court Decision No. 363K / MIL / 2017, dated September 20, 2017, it can be continued with an investigation into a money laundering case, so the handling of money laundering cases with a connexity examination can potentially be used as a "role model" in law enforcement in money laundering cases whose handling is carried out through a connexity case examination.

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