

Accountability of The Indonesian National Army Member Who Committed Corruption Crime on The Housing Obligatory Savings For Army 2020

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ABSTRACT

Corruption is not only carried out by civil society, TNI members who have undergone disciplinary training can also be engaged in committing corruption, specifically undertaken by Brigadier General TNI Yus Adi Kamrullah, S.E., M.Si. and Ni Putu Purnamasari who is a TNI member in the case of TNI-AD housing savings corruption in 2019-2020. The problem of this research is how to account for TNI members who engage in corrupting crimes in the 2020 Army Housing Compulsory Savings (TWP AD). The research method used is a statutory approach and a conceptual approach. The type of research used is normative, with primary, secondary and tertiary legitimate provisions. From the outcomes, it was concluded that the criminal responsibility of the perpetrator in this case was sentenced to defendant 1: Brigadier General TNI (ret.) Yus Adi Kamrullah, S.E., M.Si. Defendant-2: Ni Putu Purmasari has been legitimately and conclusively proven jointly and continuously to have committed the corruption crime. Sentencing the defendants to basic and additional crimes

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1. Introduction

Indonesian citizens who are members of the TNI in carrying out their duties, apart from adhering to the Pancasila values, Sapta Marga and the Soldier's Oath, as well as the 8 (eight) mandatory requirements of the TNI, are obliged to always obey and comply with all legal provisions specifically for military personnel, such as The Code of Laws, military criminal law, soldier disciplinary law, soldier disciplinary regulations and other regulations relating to military life, as well as general statutory regulations such as the Criminal Code and rules and protocols that regulate certain wrongdoings. This rule must be obeyed by every military member, whether soldier or, non-commissioned soldier or officer, so that military members in carrying out their duties do not conflict with or harm military institutions.

According to Utrecht "Military Criminal Law is a unique penal legislation because it has special characteristics that are different from general penal statute. "Special criminal law is law that is made

for several special legal subjects or for certain events, consequently unique system of legal rules contains provisions and principles that can only be implemented by definite legal subjects." (Ramsay et al., 1967). According to Hamzah, "the criteria for special criminal law are the subject or perpetrator and the specific actions." (Hamzah, 2015). Based on the criteria above, Said said that "Military Criminal Law is included in special criminal law, namely criminal law which has a certain legal subject or certain actions which can only be carried out by certain legal subjects" (Said, 2008).

Crimes of corruption are not only carried out by civilians, TNI soldiers who have undergone disciplinary training can also be involved in committing corruption, as happened in the 2022 corruption case involving TNI Soldiers, viz corruption case in the Army's Obligatory Housing Savings funds by committing acts enriching oneself or another party or a group which could destruct state capitals or economy, namely harming state finances totaling IDR 133,763,305,600 (Medistiara, 2017).

Considering the previous context, the title of this examination was taken, namely "Accountability of Members of the Indonesian National Army Who Commit Crimes of Corruption Obligatory Savings for Army Housing 2020."

2. Materials and Methods

This examination uses normative research methods, i.e. legal research carried out through studies and reviewing library materials. The approaches types to this research problem are the constitutional approach and the theoretical approach. According to (Mahmud Marzuki, 2010), "The Legislative Strategy is put into practice by reviewing all decrees and settlements that are in connection with the legal matter underway. The Legislative Approach in normative legal research has both practical and academic uses." Temporarily, according to Marzuki, the concept approach "moves from the perspectives and doctrines that emerge in legal science, by examining the perspectives and doctrines in legal science, scholars will identify concepts that legitimate understandings, concepts-legal notions and applicable legal standards to the situation at close. Understanding such perspectives and beliefs provides researchers with a foundation for creating a legal argument to address the issue at hand (Asikin, 2004).

The source of legal materials used is library research in the form of:

a. Primary Law Materials

According to (Amirudin, 2012), " The most important legal documentation is that which has legal force and is binding on individuals or society and is related to this writing, specifically legal material in the manner of decrees and rulebooks, namely, the 1945 Constitution of the Republic of Indonesia, Criminal Law Book, Law Number 8 of 1981 regarding Criminal Procedure Law, Regulation Number 48 of 2009 concerning judicial power, Law Number 20 of 2001 relating to modifications to Law Number 31 of 1999 relating to Eradication of Crimes Corruption Crime, Law Number 30 of 2002 relating the Corruption Eradication Commission, Military Criminal Code, Law Number 31 of 1997 concerning Military Justice, Law Number 34 of 2004 regarding the Indonesian National Army (TNI), Law Number 25 of 2004 concerning Military Discipline Law and TNI Commander's Regulations of 2006 concerning Technical Instructions for Settlement of Criminal Cases in the Office of the Authority."

b. Secondary Law Materials

According to Sunggono, "Additional legal documentation can be used to examine and comprehend primary legal documents because they are closely related to them (Sunggono, 2007). Secondary legal resources are legal materials obtained through library research, viz by reading legal books, newspapers and internet sources that are related to corruption.

c. Tertiary Law Materials

According to Amirudin and Asikin, " tertiary legal documents offer advice and clarification for legal primary and secondary materials for example legal vocabularies, large Indonesian dictionaries, encyclopedias and other sciences that are related to study (Soekanto, 2015)".

The method used to collect legal materials in this study is Library Research that collecting data by conducting research on books and records that are related to the problem being researched. Temporarily, the method of processing and analyzing legal materials is a qualitative analytical approach was used in this study, and a deductive method. Soekanto "qualitative analysis is a method of research that produces descriptive data both verbally and in writing and real behavior is researched and studied as a whole until a conclusion and answer to the problem in the research is found. Meanwhile, deductive analysis is as specified by universal data and then precise wrapping up are drawn (Zulyadi, 2020).

3. Result and Discussion

Corruption crimes committed by TNI members

Literally speaking, corruption is anything vile, harmful, and rotten. This is because corruption is associated with positions in government departments or machinery, abuse of authority while in service due to gifts, moral considerations, rotten nature and conditions, financial and partisan considerations, as well as the placement of groups or households to serve the power of office. Corruption Crimes are: 1) Any individual who engages in illegal behavior of enriching himself or a different individual or association which can be detrimental to the state's revenue or expenditures. 2) Anyone who, with the aim of benefiting himself or further person or a company misuses the power, possibilities, or resources that are accessible to him because of his standing, that could be detrimental to the state's treasury or economy (McNaim, 1999).

A trained and armed TNI member has the authority to defend the unified state of the Republic of Indonesia, all of which is granted by law. However, if a TNI member commits a breach of the Military Criminal Code's definition of an army crime (KUHPM) then they will be tried in a Military Court under the provisions of Law Number 31 of 1997 related to Military Justice. However, when a TNI member commits an illicit act involving corruption, they were still tried by military tribunals. The principle of military interests is often used in humanitarian law which was later adopted by Indonesia, in this case the TNI to carry out its main tasks and personnel development duties. This principle in humanitarian law means that one of the parties to a conflict has the right to take any action that can make military operations a success and also does not violate the laws of war while still observing the principles of limitation and proportionality.

Members of the Indonesian National Army, in terms of their position before the law, are Indonesian citizens who are obedient and law-abiding, adhere to strict discipline, obey their superiors, and are staunchly committed to the Unified Government of the Republic of Indonesia which is made complying with Pancasila and the Constitution of 1945. The TNI is substance to rules and regulations both general and specific, both national and international, even the TNI is subject to laws and regulations that apply specifically to the TNI only. TNI members who are Indonesian citizens are subject to the terms and conditions of the Military Criminal Law and Military Criminal Procedure Law as regulated in Law of Military Justice Number 31 of 1997. The essence of criminal accountability for TNI members lies primarily in measures of restraint or retribution, provided that the convict will be active for military service after serving his sentence. As noted in Law of Military Justice Number 31 1997, Article 5 paragraph (1), "A military (ex-convict) who will return to active duty must become a military man"[10]. Criminal accountability of military members in question is a criminal act that can be resolved through military justice (Military Justice Law Number 31 of 1997). Temporarily, military disciplinary action is an educational action against a TNI who is sentenced to serve a sentence as an action by military leadership (discipline).

Military punishment is a combination of military education and deterrence, as long as the legal rules are in line with the needs of military members, according to Article 2 of the KUHPM it is stated that "for people who are subject to the scope of the KUHPM, if it is not regulated in the KUHPM, then general criminal penalties apply, and the provisions, other provisions regulated by the laws in force

in Indonesia". Then, in the explanation of the elements written in Article 12 B, it is interpreted that "military members are state administrators who carry out their duties, functions and authority in the defense of the Indonesian state." This means that in applying the length of sanctions, imprisonment and fines, the principle of coordination (equality) with other legal entities responsible for the Corruption Crimes committed is based on Law Number 20 of 2001 concerning the Elimination of Corruption Crimes, as revised and strengthened by Law Number 31 of 1999.

Accountability for TNI Members Who Commit Corruption Crimes

The criminal accountability of TNI members in question is the act of committing a criminal act which can be resolved through military justice (Military Justice Law Number 31 of 1997). Temporarily, military disciplinary action is an educational action for soldiers who are sentenced to serve a sentence as an action by military leadership (discipline). Military punishment is more of a combination of military education and restraint until the convict is dismissed from military service.

According to Amrani and Ali, "A person can only be held criminally responsible if that person has previously been proven to have committed a prohibited act. It is impossible for someone to be held criminally responsible while he himself has not committed an act prohibited by law. If this happens, a leap of thought cannot be avoided and violations of human rights cannot be avoided (Hanafi Amrani, 2015). Sulistiryanto said that "within the military scope, regarding the responsibilities of a military member, it is not regulated in writing in statutory regulations. "So it can be concluded that responsibility is linked to crime, that military responsibility is the ability to be responsible by military members for mistakes they have committed." (Sulistiryanto, 2011). Additionally, Sulistiryanto said "the criminal penalties for military members, along with additional criminal penalties, are listed in Articles 6 1 to 4 of the KUHPM (Military Criminal Code). The essence of criminal liability for a military person is basically more of an act of deterrence or retaliation as long as the convict will be reactivated in military service after completing his-her sentence. A military man (ex-convict) who will return to active duty must become a military man" (Indonesia & Nomor, 32AD).

Criminal accountability is a manifestation of the consequences of committed misdeeds, especially criminal liability for criminal acts of corruption perpetrated by members of the TNI as regulated in Article 2 of the KUHPM which explains "for people who are subject to the scope of the KUHPM, if it is not regulated in the KUHPM, then criminal penalties apply." general, and other provisions regulated by the laws in force in Indonesia". Next, Article 12 B interprets "military members as state administrators who carry out their duties, functions and authority in the defense of the Indonesian state. "This means that referring to the application of the length of sanctions, imprisonment and fines, in this case the principle of concordance (equality) with other legal subjects applies."

In addition to the provisions regarding the criminal accountability of military members, there are provisions regarding the administrative responsibility of military members as intended in Article 6 paragraph (2) regarding additional penalties, viz ": a) dismissal from military service with or without revocation of the right to enter the armed forces. In order to impose an additional penalty of dismissal from military service, it is advisable that the dismissal be followed by revocation of the right to enter the armed forces. Because if it is not followed by the words revoked of the right to enter the armed forces, then the person concerned after being dismissed from one force is feared to join another force. According to the law, such dismissal results in the loss of all rights acquired by him from the armed forces during his previous service."

According to Sulistiryanto, "imposing a crime other than the main sentence is considered by military judges to be no longer worthy of being maintained in military society and if the sentence of dismissal is not imposed, it is feared that the convict's presence in the military after he has served his sentence will shake the foundations of public order. b) demotion. "In practice, this reduction in rank is rarely implemented, because it is felt to be unfair and of little benefit in the context of military development, especially for high-ranking non-commissioned officers and officers.". In the case of

corruption perpetrated by Defendant 1 Brigadier General TNI (ret.) Yus Adi Kamrullah, E.e., m.si. Defendant-2 Ni Putu Purnamasari, the Military Court on January 31 2023 handed down the DILMILTI II JAKARTA Decision Number 21-K/PMT.II/AD/II/2022 as follows:

Adjudging:

- a. Stating that the defendants mentioned above are: defendant 1: Brigadier General Tni (ret.) Yus Adi Kamrullah, E.e., m.si. defendant-2: Ni Putu Purnamasari has been found to constrained the corruption collectively and consistently by legal and convincing evidence.
- b. punish the defendants therefore by:
 - 1) Defendant-1:
 - a) Principal punishment: imprisonment for 16 (sixteen) years, stipulates that while the accused is currently being held in custody in amount of the sentence imposed is deducted and a forfeit of IDR 750,000,000.00 (seven hundred and fifty million rupiah) if the forfeit is unpaid, it will be replaced by captivity for 6 (six) months.
 - b) Additional punishment: pay reimbursement for state financial damages in the amount of IDR. 34,375,756,533.00 (Thirty four billion three hundred seventy five million seven hundred fifty six thousand five hundred thirty three rupiah) within 1 (one) month after the tribunal's decision becomes legally binding and if within that time period the defendant fails to pay the substitute money, the military prosecutor will seize the asset and sell it at bidding to pay the substitute funds. If the defendant is lacking enough assets to pay the replacement money, he will be sentenced to 4 (four) years in prison.
 - 2) Defendant-2:
 - a) Principal punishment: imprisonment for 16 (sixteen) years, stipulates that while the defendant is in temporary detention the entire amount of the sentence imposed is deducted and a fine of IDR 750,000,000.00 (seven hundred and fifty million rupiah) if the penalty is unsettled, it will be swapped by confinement for 6 (six) months.
 - b) Additional punishment: compensate the state for any financial damages in the amount of Rp. 80,333,490,434.00 (eighty billion three hundred thirty-three million four hundred ninety thousand four hundred thirty-four rupiah) when the defendant fails to pick up the difference in money within 1 (one) month of the verdict, it acquires permanent legal force, his property will be impounded by the military attorney/prosecutor and auctioned to cover the substitute coinage and as long as the defendant does not have appropriate assets to reimburse the alternate funds, he will be sentenced to prison for 6 (six) years.

4. Conclusion

Accountability for TNI members who committed fraud in the 2020 Army Housing Obligatory Savings Corruption Crime case has been sentenced to defendant "1: Brigadier General TNI (ret.) Yus Adi Kamrullah, S.E., M.SI. Defendant-2: Ni Putu Purmasari has been found to have committed the corruption collectively and repeatedly and was deemed guilty by law and convincingly. Sentencing the defendant-1: a. Principal punishment: imprisonment for 16 (sixteen) years, stipulates that while the accused is currently being held in custody the entire amount of the sentence imposed is deducted and a sum of IDR 750,000,000.00 (Seven hundred and fifty million rupiah) if the penalty fails to be paid, an a six-month jail sentence will be substituted. b. additional penalty: pay reimbursement for state monetary losses in the amount of IDR. 34,375,756,533.00 (Thirty-four billion three hundred seventy-five million seven hundred fifty-six thousand five hundred thirty-three rupiah) not less than 1 (one) month after the official judgment becomes final and binding. Meanwhile defendant-2 with a. main penalty: imprisonment for 16 (sixteen) years, stipulates that while the defendant is in temporary detention the entire amount of the sentence imposed is deducted and a fine of IDR. 750,000,000.00 (Seven hundred and fifty million rupiah) if the fine is not paid, it will be replaced by captivity for 6 (six) months. b. additional punishment: paying recompense for state financial losses in the amount of IDR. 80,333,490,434.00 (Eighty billion three hundred thirty-three million four hundred ninety thousand four hundred thirty-four rupiah) not more than 1 (one) month after the official judgment becomes final and binding.". Additionally, Law Number 20 of 2001 about the elimination of corruption violations and Law Number 25 of 2004 regarding Military Discipline law embody penal law restrictions.

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