

Law Enforcement In Cases Of Criminal Domestic Violence (KDRT) Within The TNI

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Abstract: *In accordance with the application of the principle of equality before the law, if criminal behavior occurs against a soldier's wife, the punishment imposed on her husband as a TNI soldier will be the same as that applied in the General Court. The aim of this research is to show that in the context of law enforcement as guidance within the TNI, in domestic violence cases many military members are charged with criminal sanctions by Military Judges. Qualitative research uses a descriptive approach to collect data systematically, factually, and quickly according to the description at the time of the research. The results of this research show that The aim of the Panel of Judges in imposing sentences is not merely to convict people who commit criminal acts but also has the aim of educating so that the person concerned can return to the right path to become a good citizen and soldier in accordance with the Pancasila and Sapta Marga philosophies.*

Keywords : *Domestic Violence Crimes, Military Justice, Military, TNI Soldiers*

INTRODUCTION

The Republic of Indonesia is a state based on law (*rechtstaat*) and not mere power (*machstaat*) . This is stated explicitly in the 1945 Constitution of the Republic of Indonesia which states "The Indonesian state is a state of law," ¹one of which regulates the issue of marriage which is a bond that unites men and women to form a family, marriage will begins with a marriage contract. From the marriage contract that has been pronounced by the husband, legal consequences will automatically arise between them, namely the rights and obligations as husband or wife.² The development shows that acts of physical, psychological, sexual violence and domestic neglect actually occur so that adequate legal instruments are needed to eradicate domestic violence. According to Article 1 number 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence states:³

"Every act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere."

Considering how serious this crime is, the crime of Domestic Violence, which was originally referred to in the Criminal Code, has subsequently been regulated by the *lex specialis law* as a special criminal offense in Law Number 23 of 2004 concerning the

¹Article 1 paragraph (3) of the 1945 Constitution, 4th (fourth) Amendment

²Aulia Muthia, *Islamic Law, Dynamics Regarding Family Law* , (Yogyakarta: Pustaka Baru Press, 2020), p. 58

³Indonesia, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 1 number 1. LN of 2004 No. 95, TLN No. 4419

Elimination of Domestic Violence. Domestic violence can be committed by anyone with any victim, so it is possible that this crime is committed by members of the military, which is mainly carried out against the wives of TNI soldiers . The military are people who are educated, trained and prepared to fight , therefore they are subject to special norms or rules. TNI soldiers must submit without *reserve* to a code of conduct that is determined with legal certainty and its implementation is strictly monitored by applicable legal regulations.

TNI soldier's wife also has the same rights before the law as other civilian wives. In accordance with the application of the principle of *equality before the law*, if criminal behavior occurs against a soldier's wife, the punishment imposed on her husband as a TNI soldier will be the same as that applied in the General Court. The separation of the legal process in Military Courts and General Courts in its resolution often causes problems⁴ Among other things, the wife of a TNI soldier does not get justice because the legal process for the perpetrator (TNI soldier) in military court can be stopped because the superior who has the right to punish (Ankum) as the superior of the TNI soldier is given the authority to carry out a preliminary examination, and the examination can only be carried out with permission. /with the knowledge of the suspect's superiors (unless caught red-handed or the suspect is surrendered).

RESEARCH METHODS

This research is legal research *which* uses several approaches to answer the problems studied, namely: 1) statutory approach , 2) conceptual approach , 3) comparative *approach* , and 4) historical and philosophical approaches (*historical approach*) . Data processing is carried out qualitatively. The written legal materials that have been collected are then systematized according to the problems studied. Next, the legal material is studied and explained according to the problem using the relevant theoretical basis. To answer the problem, the legal material that has been systematized is then assessed so that it can answer correctly the meaning, position and legal implications.

DISCUSSION

The Directory of Indonesian Supreme Court Decisions in which cases of Domestic Violence committed by members of the TNI are recorded fluctuates every year. In 2018 there were 5 cases, in 2019 there was a decrease in cases totaling 2 cases, while in 2020 there was

⁴K. Muhajarah, "Violence against women in the household: Socio-Cultural, Legal and Religious Perspectives", *Sawwa: Journal of Gender Studies* , Vol. 11, no. 2, December (2016) : 127-146

an increase in cases totaling 6 cases of Domestic Violence (KDRT) committed by the Indonesian National Army (TNI).⁵ Not a few domestic violence cases involving military personnel as perpetrators are brought to the realm of Military Justice. In this domestic violence case, Ankum conducted an investigation into its subordinate soldiers under the authority of its command, which was carried out by a Military Police investigator or Prosecutor as explained in Article 74 of the Military Justice Law which explains that the superior who has the right to punish (Ankum) has the authority:

1. Carrying out investigations on subordinate Soldiers who are under the authority of his command, the implementation of which is carried out by Investigators as intended in Article 69 paragraph (1) letter b or letter c
2. Receive reports on the implementation of investigations from Investigators as intended in Article 69 paragraph (1) letter b or letter c.
3. Receive case files resulting from investigations from Investigators as intended in Article 69 paragraph (1) letter b or letter c; And
4. Detain suspects who are members of his subordinates who are under the authority of his command.

In connection with the fact that not all TNI soldier superiors have the time or opportunity to carry out investigations of their subordinates who have committed criminal acts, then based on the explanation of Article 74 of the Military Justice Law, the authority of superiors who have the right to punish (Ankum) to carry out investigations, the implementation is carried out by investigators. Military Police or Military Prosecutor . Based on these conditions , in this investigation process, Ankum is more dominant than the other components, because neither the Military Police nor the Military Prosecutor can absolutely carry out a preliminary examination, and the examination can only be carried out with the permission/knowledge of the suspect's superior (unless caught red-handed or surrender of the suspect) .⁶ After the licensing process by Ankum as mentioned above, the following steps are the same as regulated in the Civil Code, namely the following actions:

1. First stage : Receive a report or be caught red-handed.

After examining the scene of the incident, investigators are authorized to take the first action at the scene in accordance with the mandate of Article 71 of Law Number 31 of 1997 concerning Military Justice. Actions taken in an investigation to look for evidence

⁵SA Syam, "Prenuptial Agreement Post Constitutional Court Decision No. 69/PUU-XIII/2015 (Analysis of Supreme Court Decisions)". *Islamic Circle* , Vol. 1, No. 1, January (2020) : 53-67.

⁶Nikmah Rosidah, *Military Justice Law*, (Bandar Lampung: Anugrah Utama Raharja, 2019), p. 58

and something that can be used as a clue in finding a suspect. Then the examination includes a summons, which can be carried out by investigators on someone who is suspected of being a suspect or witness for questioning to make it easier to identify perpetrators of domestic violence crimes.⁷

2. Second stage : Case submission and prosecution .

Cases being investigated will be handed over to the Case Submitting Officer or PAPER. Article 124 of Law Number 31 of 1997 concerning Military Justice states that:⁸

- a. After receiving the results of the investigation from the investigator, the prosecutor immediately studies and examines whether the results of the investigation are complete or not.
- b. In the event that the formal requirements are incomplete, the Auditor requests that the Investigator immediately complete them.
- c. If the results of the investigation are found to be insufficient, the Prosecutor will carry out additional investigations to complete or return the case files to the Investigator along with instructions regarding the matters that must be completed .

3. Third stage: Submission of the case by the Case Submitting Officer (Paper).

- a. The case is handed over by the Military Prosecutor by handing over the case files to the competent Military Court accompanied by an indictment letter. The indictment is prepared by the Prosecutor, dated and signed and containing the full name, rank, central registration number, position, unit, place and date of birth/ age, gender, nationality, religion, place of residence of the Defendant as well as a careful, clear and complete description of the facts regarding the criminal act charged by stating the time and place where the crime was committed. If the indictment does not comply with the provisions, it is null and void by law.
- b. After the Military Court/High Military Court receives the transfer of case files from the Military Prosecutor/High Military Court, the Head of the Military Court/Head of the High Military Court immediately studies whether the case falls within the authority of the Court he leads. If the case file has been received at the competent Military Court/High Military Court, the Court appoints a Panel of Judges who will hear the case in question, then the Chief Judge who is appointed after studying the case file then sets a trial date and orders the Prosecutor to summon the defendant and witnesses.

⁷RM Suharto , *Prosecution in Judicial Practice* , (Jakarta: Sinar Graphic, 2004), p. 54

⁸Article 124 of Law Number 31 of 1997 concerning Military Justice

4. Fourth stage : Implementation of Military Court decisions .

The implementation of a Court Decision that has permanent legal force is carried out by the Military Prosecutor after the Registrar sends a copy of the decision to the Military Prosecutor to implement the Court's decision based on an excerpt from the Decision.

In the context of law enforcement as guidance within the TNI, in domestic violence cases many military members are charged with criminal sanctions by Military Judges. The aim of the Panel of Judges in imposing sentences is not merely to convict people who commit criminal acts but also has the aim of educating so that the person concerned can return to the right path to become a good citizen and soldier in accordance with the philosophy of Pancasila and Sapta Marga.⁹ Behind these sanctions, on the other hand, it is the victim who is the injured party. Not infrequently, during the examination process in domestic violence cases, the perpetrator and the victim have forgiven each other and tried to reconcile. However, the judicial process continues, causing harm to both parties (the perpetrator and the victim). So with these considerations in mind, in domestic violence cases, a Case Handling Officer (PAPER) can stop the investigation and not forward the case to the Court in accordance with the provisions of Article 101 paragraph (2) of the Military Justice Law which states that: "The Case Handling Officer can stop the investigation by decision letter based on the Minutes of Legal Opinion (Bapat) of the Auditor."¹⁰ According to Utrecht's explanation which emphasized that, "The victim of a criminal act can withdraw his report if there has been a settlement."¹¹ In relation to cases of domestic violence committed by military personnel, it refers to Article 50 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence which states that:¹² In addition to the penalties as referred to in this Chapter , Military Judges can impose additional penalties in the form of:

1. Restrictions on the perpetrator's movements either aim to keep the perpetrator away from the victim for a certain distance and time, or limit certain rights of the perpetrator
2. Determination of the perpetrator following a counseling program under the supervision of a certain institution.

⁹Nur Fadillah Juanda Putri, "Law Enforcement Against the Crime of Domestic Violence (KDRT) committed by Members of the Indonesian National Army (TNI)", *Journal of Lex Generalis (JLG)*, Vol.3, No. 5, May (2022) : 1208-1219

¹⁰Article 101 paragraph (1) Law Number 31 of 1997 concerning Military Justice

¹¹E. Utrecht, *Introduction to Indonesian Law* , Sixth printing, (Jakarta: Balai Buku Ichtar Publishers, 1959), p. 82

¹²Article 50 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Based on the theory of authority, it is linked to the rules contained in Article 40 of Law No. 31 of 1997 concerning Military Justice which states that the Military Court institution has the authority to carry out examinations, and can judge and decide a case .

CONCLUSION

In this research, conclusions can be drawn, namely:

1. the legal process in Military Courts and General Courts in its resolution often causes problems , including that the wives of TNI soldiers do not get justice because the legal process for perpetrators (TNI soldiers) in military courts can be stopped because based on the explanation of Article 74 of the Military Justice Law, the authority Superiors who have the right to punish (Ankum) to carry out investigations, the implementation is carried out by Military Police investigators or Military Prosecutors . Based on these conditions , in this investigation process, Ankum is more dominant than the other components, because neither the Military Police nor the Military Prosecutor can absolutely carry out a preliminary examination, and the examination can only be carried out with the permission/knowledge of the suspect's superiors .
2. In the context of law enforcement as guidance within the TNI, in domestic violence cases many military members are charged with criminal sanctions by Military Judges. The aim of the Panel of Judges in imposing sentences is not merely to convict people who commit criminal acts but also has the aim of educating so that the person concerned can return to the right path to become a good citizen and soldier in accordance with the philosophy of Pancasila and Sapta Marga . Behind these sanctions, on the other hand, it is the victim who is the injured party. Not infrequently, during the examination process in domestic violence cases, the perpetrator and the victim have forgiven each other and tried to reconcile. However, the judicial process continues, causing harm to both parties (the perpetrator and the victim).
3. With these considerations in mind, in domestic violence cases, a case handover officer (PAPER) can stop the investigation and not forward the case to court as stipulated in Article 101 paragraph (2) of the Military Justice Law which states that: "The case handover officer can stop the investigation with a letter the decision is based on the Minutes of Legal Opinion (Bapat) of the Oditur." According to Utrech's explanation which emphasized that, "The victim of a criminal act can withdraw his report if there has been a peace . It is related to domestic violence cases committed by military personnel,

namely referring to Article 50 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

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