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The Imposition of a Niet Ontvankelijke Verklaard Verdict in Cases of Domestic Violence in Military Courts

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Abstract. *The purpose of writing this thesis is to find out about the Judge's considerations in issuing a Niet Ontvankelijk Verklaard (NO) verdict on domestic violence cases in military courts and to find out how the verdict should be issued on domestic violence cases in military courts. The type of research used is normative legal research because in this study the author focuses on the inconsistency between the expected conditions that have been regulated in the law and the reality that actually occurs, where this study uses a legislative approach, a case approach, and a conceptual approach. The conclusion of this study is that the Judge's consideration in issuing a Niet Ontvankelijk Verklaard (NO) verdict on domestic violence cases in military courts is because the victim has withdrawn her complaint before the main case examination, even though the withdrawal of the complaint violates Article 75 of the Criminal Code, the Judge still grants the request because the Judge uses the Supreme Court Decision Number 2238 K / Pid.Sus / 2013 dated March 5, 2014 and the Supreme Court Decision Number 1600-K / Pid / 2009 and the Judge prioritizes the value of justice in resolving the case and uses the principles of fast, simple, and low-cost justice. Because the Niet Ontvankelijk Verklaard (NO) verdict is not known in criminal cases, in the author's opinion, ideally the Judge should issue a suspended sentence because the type of suspended sentence is also a type of punishment and is not at all an acquittal or deletion, while the existence of a probationary period that has been determined by the Judge aims to educate the perpetrator to be more careful and able to improve themselves*

Keywords: *judge's consideration, decision niet ontvankelijk verklaard, domestic violence, military court*

1. INTRODUCTION

The explanation of the state of law or "rechtsstaat" in the 1945 Constitution was previously only found in the explanation section. However, in 2002 the 1945 Constitution underwent the fourth amendment so that the concept of the state of law or "rechtsstaat" was formulated explicitly in Article 1 paragraph (3) which states that "The State of Indonesia is a state of law". So that with this concept, the law must be used as the basis for state life, not based on economics or politics.

The meaning of Indonesia is a state of law is that all elements of life in the territory of the Unitary State of the Republic of Indonesia (NKRI) must be based on the law and all legislative products and their derivatives that apply in the territory of the Republic of Indonesia. To be able to realize the rule of law, the Indonesian state must be able to enforce the law thoroughly and fairly to every citizen in regulating all matters within the state.

Indonesia is a state of law, where the state administration system is based on laws that have been made. This means that everything that is to be done in state administration activities must be based on the rules of the game that have been determined and determined together. With this explanation, it can be concluded that everyone who is an Indonesian citizen must

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obey and recognize the supremacy of the law itself. So that everyone who commits a criminal offense must be subject to punishment and carry out the judicial process that applies in the country of Indonesia.

Crimes that often occur in marriage are domestic violence or abbreviated as domestic violence. According to data from the Ministry of Women's Empowerment and Child Protection in 2024 there were 2,571 cases of domestic violence including 558 male victims and 2,253 female victims.

Dengan data tersebut menunjukan bahwa jumlah kasus kekerasan dalam rumah tangga merupakan tindak pidana yang sering occurs compared to other types of criminal acts. So it is not an exaggeration to say that the house, which is supposed to be the most comfortable place for family members, is actually a place for domestic violence crimes that often take lives.

Domestic violence is also known as domestic violence, which is violence based on gender or sex, where the violence is carried out within the personal sphere. Usually the perpetrators of domestic violence are the people closest to the victim, such as husbands who commit violence against wives, fathers who commit violence against daughters, and even grandfathers who commit violence against grandchildren.

Article 1 of Law No. 23/2004 on the Elimination of Domestic Violence explains that domestic violence is an activity carried out against a person, especially against women, which can cause physical, psychological, sexual, or domestic neglect, which includes making threats, coercion, and unlawful deprivation of independence within the scope of the household.

Therefore, domestic violence is categorized as a criminal act, because the act is prohibited and unlawful, so that the act can be subject to criminal sanctions for those who violate the prohibition (Dewi Karya, 2013). Perpetrators of domestic violence can be committed by anyone, so it does not rule out the possibility that this criminal act is committed by TNI Soldiers, which is mainly often committed against the wife concerned.

TNI Soldiers have a special task as a means of national defense that carries out such heavy state defense, then the TNI Soldiers have privileges. The location of the privilege is that TNI Soldiers have their own legal rules that specifically regulate the lives of their military members. The special rule is called military law.

Military law is a separate system of jurisprudence in which it regulates policies and regulations specific to the armed forces and the civilian population under military rule based on the enactment of military law. Military law has a special nature because it has different procedures than other laws (Moch Faisal Salam, 2006) .

Military law is made separately because the armed forces which are a means of national defense such as TNI Soldiers have a very important role and task. Thus, the army must be armed, always fostered and prepared as well as possible so that it is always in a state of readiness to take up arms wherever and whenever necessary.

Based on military law, TNI Soldiers who commit disciplinary violations or commit criminal offenses will be prosecuted and tried in military courts. Based on Law Number 31 of 1997 concerning Military Justice in Article 5, it explains that military justice is the implementation of judicial power within the scope of the TNI which aims to uphold law and justice by taking into account the implementation of national defense and security.

Military justice is within the scope of the Supreme Court where its position is regulated in Law Number 31 of 1997 concerning Military Justice. So with this explanation it can be concluded that military justice is a law enforcement system that has the duties, functions and authority to try violations and crimes committed by TNI Soldiers and to adjudicate military administrative disputes.

If TNI Soldiers commit domestic violence, they will be prosecuted and tried in military court through four stages including, the first stage is an investigation, namely when the victim reports the incident of domestic violence to the military police (PM), the second stage is prosecution which is carried out by the military prosecutor when the military police have submitted the results of the investigation case file, the third stage is examination at trial, and the fourth stage is reading the decision by the military judge.

Based on this description, in this study the author will discuss whether the military prosecutor's prosecution is unacceptable and the defendant's case is dismissed or Niet Ontvankelijk Verklaard (N.O) for the crime of domestic violence. This can be seen in the following Military Court decisions:

Table 1

Domestic violence cases decided by Niet Ontvankelijk Verklaard (N.O)

No	Decision Number	Jurisdiction of the Court	Level of Judgment	The Verdict
1	25-K/PMT-II/AD/III/ 2022	Jakarta High Military Court II	First	the prosecution of the military prosecutor is inadmissible or
2	18-K/PMT-II/AU/I/2022	Jakarta High Military Court II	First	the prosecution of the military prosecutor is inadmissible
3	110-K/PM-II-08/AD/III /2022	Jakarta Military Court II	First	the prosecution of the military prosecutor is inadmissible

Table 2

Domestic violence cases that are not dismissed by the court *Niet Ontvankelijk Verklaard* (N.O)

No	Decision Number	Jurisdiction of the Court	Level of Judgment	The Verdict
1	46-K/PMT II/AD/VIII/2022	Jakarta High Military Court II	First	Criminalization
2	57-K/PMT II/AD/X/2022	Jakarta High Military Court II	First	Criminalization
3	35-K/PMT II/AL/X/2023	Jakarta High Military Court II	First	Criminalization

During the trial, the facts were revealed so that the judge was of the opinion that "the prosecution of the military prosecutor against the defendant cannot be accepted and the case is decided Niet Ontvankelijk Verklaard (N.O) and because the trial of the defendant has not examined the subject matter of the case, the costs of the case are charged to the state".

According to the judge at the hearing, the victim explained that she wanted to withdraw the complaint that she had made because there had been an amicable settlement between the victim and the defendant. The time period between the complaint and the victim's withdrawal of the complaint exceeded three months. Article 75 of the Criminal Code stipulates that the time span between the complaint and the withdrawal of the complaint shall not exceed three months. Therefore, the requirements set out in Article 75 of the Criminal Code cannot be fulfilled.

According to the Judge, this is also in accordance with the principle of restorative justice and the purpose of Law Number 23 Year 2003 on the Elimination of Domestic Violence, which is to maintain a good, harmonious and prosperous relationship. Thus, the revocation of a report on a complaint offense can still be done without a certain time limit.

When referring to Law Number 31 of 1997 concerning Military Justice and the Criminal Procedure Code (KUHAP) in criminal cases, only three types of decisions are recognized, namely acquittal from all charges, acquittal from all charges, and conviction. While the Niet Ontvankelijk Verklaard (N.O) decision is a type of decision known in the civil justice system, where the decision explains that the lawsuit cannot be accepted, because it contains formal defects or the contents of the lawsuit are unclear.

Judges who resolve criminal cases by applying the principle of restorative justice in their decisions basically explain that the defendant is proven to have committed a criminal offense in accordance with the charges determined by the military prosecutor, but cannot be held criminally responsible because restorative justice has been implemented. Thus releasing the defendant from all legal charges.

However, in the military court decisions number 25-K/PMT-II/AD/III/2022, Number 18-K/PMT-II/AU/I/2022, and Number 110-K/PM II-08/AD/III/2022 that the author used, the judge did not explain that the defendant was proven to have committed a criminal offense in accordance with the charges that the military prosecutor had determined and in these decisions, the judge did not decide that the defendant could not be held criminally responsible because restorative justice had been implemented. And the Judge in his decision only explained that the prosecution of the military prosecutor against the defendant was unacceptable and the case was decided Niet Ontvankelijk Verklaard (N.O) and because the trial of the defendant had not examined the subject matter, the costs of the case were charged to the state.

2. LITERATURE REVIEW

Restorative Justice Theory

One of the well-known theories in law is the theory of restorative justice, where the function of this theory is to close the gap of deficiencies and weaknesses in the settlement of criminal cases formally, namely with a repressive approach as implemented through the criminal justice system. Because the conventional settlement of criminal cases only focuses on retaliation in the form of punishment and imprisonment of the perpetrators of criminal acts, while many victims of criminal acts do not feel satisfied with the punishment.

The criminal justice system in Indonesia recognizes the concept of restorative justice approach or in Indonesian is restorative justice. The definition of restorative justice itself is an action taken by the perpetrator of a criminal offense against the victim to restore a relationship or the original situation by obtaining an agreement of the parties and making peace efforts outside the court so that legal problems that occur as a result of the criminal offense can be resolved properly (Dessi Perdani Yuris Puspita Sari, 2022).

From this understanding, it can be concluded that restorative justice is an effort to resolve criminal cases involving parties such as law enforcement officials, perpetrators, victims and related parties by bringing together for the purpose of seeking recovery and not just retaliation against the perpetrator by making a mutual agreement outside the court.

The term restorative justice was first introduced by Albert Eglash in 1977 through his writing on reparation. The article explains that restorative justice is an alternative restitutive justice approach to retributive justice and rehabilitative justice approaches (Albert Eglash, 1977). The history of the development of restorative justice begins with out-of-court settlements made by groups or parties involved and have interests in 1970 in Canada called victim offender mediation.

Restorative justice was initially applied to children who committed criminal offenses, where the child who committed the crime was allowed to meet with the victim to make legal proposals that became one of the considerations of the Judge. In addition, the history of restorative justice is also explained in a book by James Dignan entitled Understanding Victims and Restorative Justice. In the book, Dignan explains that restorative justice began when Albert Eglash looked for differences in three forms of criminal justice, namely retributive justice, distributive justice, and restorative justice.

Theory of Law Discovery

Not infrequently we find that a case is not regulated in the law or the existing law is contrary to the situation at hand. Therefore, the task of the Judge is not only to apply a law but the Judge can also make law. Judges in this case perform law formation (rechtsvorming), legal analogy (rechtanalogy), legal refinement (recthverfining), or legal interpretation (recht interpretative).

These activities in the legal system are called legal discovery activities (rechtsvinding). The school of legal discovery explains that judges are still bound by the law in conducting legal discovery activities, but not as strict as the teachings of legism because judges also have freedom.

The definition of legal discovery according to Paul Scholten is an activity that not only applies the law to resolve an event but the rules must be found, either by way of interpretation, analogy, or by way of legal interpretation. And according to Sudikno Mertokusumo, legal discovery is the process of formation by judges or other legal officers who are given the task of applying the law to concrete legal events, so the most important thing in legal discovery is how to find or determine the law for concrete events.

From this understanding, it can be concluded that legal discovery is the process of law formation by the judge, where the judge is not only guided by the available laws but also from other sources of law. In conducting legal discovery, the Judge must see whether the law does not provide clear regulations, or whether the law does not regulate it. If this is the case, then the Judge can make legal discoveries. Because the purpose of making legal discoveries is to create concrete laws in accordance with the needs of society.

3. METHODS

Research Type

Research in the field of law consists of two types, namely normative legal research (juridical normative) and empirical legal research (socio legal research). Normative legal research is called doctrinal legal research which means that research is carried out on legal norms and principles contained in laws and regulations or other legal regulations that are outside the law, where there is a legal vacuum, overlap between one norm and another, synchronizing law, and comparing law and legal history.

While empirical legal research is legal research conducted in the field with the aim of understanding the background of a situation so that it can be found whether a legal application can be effective or not.

In the research that the author conducted, the author used the type of normative legal research. Because in this research the author focuses on the incompatibility between the expected situation that has been regulated in the law and the reality that actually occurs, so that what is expected to occur due to the application of the law does not function as expected.

Research Approach

The approach in legal research is important because using an approach can determine a discussion and problem solving of a legal problem. According to Peter M. Marzuki in relation to normative legal research the legal research approach used is as follows (Marzuki Peter Mahmud, 2011):

a. case approach.
b. statute approach.
c. historis approach.
d. comparative approach.
e. conceptual approach.

The approach used by the author in this research based on the approach above is:

a. statute approach

The statutory approach (statue approach) is an approach that is carried out by examining all laws and regulations that have a relationship with the legal issues under study.

b. case approach

The case approach aims to find the truth value and the best solution to legal events that occur in accordance with the principles of justice. The case approach that the author

takes is by examining related cases and has become a court decision that has permanent legal force.

c. conceptual approach

By using a conceptual approach, after the author finds the results of the analysis of the first and second approaches, the author offers an ideal concept regarding the analysis and consideration of Judges in imposing a Niet Ontvankelijk Verklaard verdict on cases of domestic violence in military courts.

4. DISCUSSION

The discussion section is arguably the most important part of an article, as it is the last section a reader sees and can significantly impact their perceptions of the article and the research conducted. Different authors take varied approaches when writing this section. The discussion section should:

1. Consideration of Judges in Imposing a Decision of Niet Ontvankelijk Verklaard (N.O) Against Domestic Violence Cases in Military Courts.

In married life, the goal of achieving happiness is the dream of every married couple in this world. Over time, social life in society has changed, so far the community has considered that the household is a safe place because all family members feel protected and peaceful. However, today cases of domestic violence are often experienced by women as a wife or child victim, while the perpetrators of such violence are generally men who have the role of husband or father. Before further discussing domestic violence, we must first understand the definition of domestic violence itself.

Domestic violence or abbreviated as KDRT consists of two words, namely "violence" and "household". Etymologically "violence" is ferocity; cruelty; abomination; and coercion with pressure. And according to the Big Indonesian Dictionary (KBBI) "violence" means the behavior of a person or group that causes physical, psychological, or sexual damage to someone so that it can cause death.

Meanwhile, the definition of "household" is a group formed from the relationship between men and women based on legal ties, namely through marriage. Regarding who is included in the scope of the family is a husband, wife, and children, including adopted children and stepchildren, besides that other people who work to help the household and live in the household such as domestic servants are also included in the family.

From this description which discusses the meaning of "violence" and "household", we can generally understand that domestic violence or in English called domestic violence is an

act of violence committed by one family member in one house which aims to impose the will of one party by hurting or intimidating other family members.

The definition of domestic violence according to Tarigan, Sutjipto, Yudhan, and Soenaryo is all forms of physical and psychological violence that occurs within the scope of the household, both between husband and wife and violence that occurs between children and parents which results in physical, mental, sexual, and economic injuries.

According to Law No. 23/2004 on the Elimination of Domestic Violence in CHAPTER I Article 1, domestic violence is any act committed against a person, especially women, which can cause physical, mental, and or domestic neglect, including unlawful coercion or deprivation of independence within the scope of the household.

The occurrence of conflicts or tensions such as differences of opinion and quarrels are common actions in the household. However, these actions can cause disharmony in the household, of course it is impossible if there is no cause behind these actions. Likewise, acts of domestic violence must have a background. The following are internal factors in the occurrence of domestic violence, this factor comes from within the perpetrator, this factor is also influenced by the character, emotions, and past experiences that occurred by the perpetrator, including:

1. Past experience is something that should be considered because usually the perpetrator has witnessed domestic violence committed by his parents. With a bad past experience, it can trigger someone to do this in the future.
2. Excessive suspicion or what is called overthinking, especially with regard to their partner's activities. Even though the partner does not keep any secrets if the perpetrator has excessive suspicion, it is possible that the perpetrator will commit violence against his partner.
3. The perpetrator has poor emotional control, because excessive emotions result from poor emotional control. So that someone can commit violence both physically and verbally.

In addition to the internal factors behind domestic violence, it turns out that there are also external factors, where these factors come from outside the perpetrator, including:

1. Infidelity, the definition of infidelity itself is an act of contradiction because one of the parties in the family, either husband or wife, has a relationship with an extramarital partner without the marriage partner knowing.
2. Economic Problems, because basically the head of the household (husband) has an obligation to provide for his family. If this obligation is not carried out by a husband

to his family, it can fall into the category of economic violence, where this can be a factor in household disharmony which is the beginning of domestic violence.

3. Patriarchal culture within the family and society itself. Patriarchal culture explains that men have more power and power over everything than a woman. So that the existence of this culture creates an attitude of dependence of women as wives on their husbands, from this attitude of dependence, a wife will feel herself weak and helpless if her husband is not around.
4. Differences in principles between husband and wife. Although the husband and wife have been united in a marriage bond which is the basis for a family, it cannot be denied that the two of them have different principles, with the difference in principles being the beginning of the quarrel.

The following are the types and forms of domestic violence based on Article 5 of Law of the Republic of Indonesia Number 5 of 2004 on the Elimination of Domestic Violence:

1. Physical abuse is an activity that causes pain from actions such as hitting, kicking, biting, and other physical activities that can cause physical disability.
2. Psychological abuse, is mental violence that can lead to a decrease in a person's self-esteem, and trust due to intimidation, and talking loudly accompanied by threats.
3. Economic abuse or domestic neglect, is an act that makes someone economically miserable, such as a husband who neglects his wife and children who are not given a living, or even a husband who lets her work continuously.
4. Sexual abuse, which is an act that aims to degrade a person's dignity aimed at a person's body or sexuality, such as molesting during sexual intercourse, or a husband who forces his wife to work as a commercial sex worker

The 1945 Constitution explains that the Indonesian state is based on law where in Indonesia the law has the highest power in the state, based on this, court decisions are the most important thing for reflecting justice, including court decisions in the form of criminal convictions and punishments.

Article 5 of Law of the Republic of Indonesia Number 5 of 2004 concerning the Elimination of Domestic Violence has explained the forms of domestic violence, because domestic violence is a criminal offense, so that in CHAPTER VIII of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence regulates the provisions of elements and sanctions for perpetrators of criminal acts of domestic violence, including the following:

Table 3

Physical Violence		
Legal Basis	:	Article 44 paragraph (1)
Contents	:	Any person who commits physical violence within the scope of the household shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 15,000,000 (fifteen million rupiah).
Criminal Elements	:	1. Every person: i.e. every Indonesian citizen (WNI) who is subject to the laws of Indonesia. 2. Committing physical violence: physical acts that can cause minor or serious injuries that have an impact on physical health. 3. Within the scope of the household: is violence committed against someone who has blood ties or marital ties such as husband, wife, children, and people who work in the household
Criminal Sanctions	:	Imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 15,000,000 (fifteen million rupiah).
Psychic Abuse		
Legal Basis	:	Article 45 paragraph (1)
Contents	:	Any person who commits psychological violence within the scope of the household shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 9,000,000 (nine million rupiah).
Criminal Elements	:	1. Every person: i.e. every Indonesian citizen (WNI) who is subject to the laws of Indonesia. 2. Psychological violence: is an act committed by someone in a non-physical manner that aims to degrade, humiliate, and create fear in the victim. So that the victim feels uncomfortable, loses self-confidence, and is helpless. 3. Within the scope of the household: is violence committed against someone who has blood ties or marital ties such as husbands, wives, children, and people who work in the household.
Criminal Sanctions	:	Imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 9,000,000 (nine million rupiah).
Sexual Violence		
Legal Basis	:	Article 46
Contents	:	Any person who commits sexual violence within the scope of the household shall be punished with a maximum imprisonment of 12 (twelve) years and a maximum fine of Rp. 36,000,000 (thirty-six million rupiah).
Criminal Elements	:	1. Every person: i.e. every Indonesian citizen (WNI) who is subject to the laws of Indonesia. 2. Sexual violence within the scope of the household: sexual acts committed within the scope of the household due to pressure and/or coercion by one of the parties with a specific purpose. The specific purpose means for personal satisfaction due to sexual disorder or commercial purposes. 3. Within the scope of a household: is violence committed against a person who is bound by blood or marriage such as husband, wife, children, and people who work in the household.
Criminal Sanctions	:	Imprisonment for a maximum of 12 (twelve) years and a maximum fine of Rp. 36,000,000 (thirty-six million rupiah).
Domestic Abandonment		
Legal Basis	:	Article 49
Contents	:	Any person who neglects another person within the scope of his/her household shall be punished with imprisonment of up to 3 (three) years or a fine of up to Rp. 15,000,000 (fifteen million rupiahs).
Criminal Elements	:	1. Every person: i.e. every Indonesian citizen (WNI) who is subject to the laws of Indonesia. 2. Neglect of others: means the act of a person who restricts and/or prohibits people from working properly inside or outside the home so that the victim has economic dependence on the perpetrator and is under the control of the perpetrator. 3. Within the scope of the household: is violence committed against someone who has blood ties or marital ties such as husbands, wives, children, and people who work in the household.
Criminal Sanctions	:	Imprisonment for a maximum period of 3 (three) years or a maximum fine of Rp. 15.000.000,- (fifteen million rupiah)

Currently, domestic violence in Indonesia is very worrying, where the perpetrators of domestic violence are not only from civil society but also from TNI soldiers as state apparatus. This is very surprising, because as we know that TNI soldiers have very important duties and functions to the state and society. Where one of the duties and functions of the TNI that must be carried out to the community is never to scare and hurt the community.

TNI soldiers have their own privileges, namely having orders from the state to become pioneers and vanguards in protecting the Republic of Indonesia, therefore the laws that apply to TNI soldiers are also special. In addition to the general law, TNI soldiers also have a special law called military law, to achieve military law enforcement, a system called the Military Court is needed.

Military Justice is a set of judicial power implementers within the armed forces that has the duty and function of trying criminal offenders committed by soldiers, who based on the law are equated with soldiers, and / or members or groups or bodies that are equated or considered as soldiers. The purpose of the Military Tribunal is to uphold law and justice based on the interests of the implementation of national defense and security.

The Military Court is the court of first instance to try suspected perpetrators of criminal offenses who have the rank of Captain and below. The High Military Court is a court of second instance or appeal for criminal and military administrative cases that have been decided by the court of first instance, but the High Military Court is the court of first instance for offenders with the rank of Major and above.

Meanwhile, the Main Military Court is the second level or appeal court for criminal cases and military administration cases that have been decided at the High Military Court. And the Battle Military Court is a court of first instance to try perpetrators of criminal offenses committed by soldiers or those equated with soldiers in the battle area, and this Court is dynamic because it follows the movement of military members in battle in an area.

The superior who has the right to punish or abbreviated as ANKUM is the direct superior of the perpetrator of a criminal offense committed by TNI soldiers who have the authority to conduct investigations and impose military disciplinary penalties based on established regulations. Case Submission Officer or abbreviated as PAPERA is a soldier who has a position as an officer who has been determined by law to be able to determine criminal cases committed by TNI soldiers under his command to be submitted or resolved through the Military Court or resolved outside the court or determine whether the case is resolved in the general court. Military Police is a police agency of a military unit that has the task of organizing law enforcement, discipline and order within the TNI armed forces aimed at the main military tasks and upholding state sovereignty.

The Military Advocate and High Military Advocate are officials from the TNI soldiers who are appointed and have the authority to conduct investigations, become public prosecutors and conduct prosecutions and as executors of decisions that have been determined by the Military Court. The institution of the Military Advocate is called the Military Advocate. The

Military Court consists of several Judges in accordance with the position of the court including Military Judges, High Military Judges, and Main Military Judges, hereinafter referred to as Judges, are TNI soldier officials who have been appointed and determined by law so that they have the authority to exercise judicial power in court. In military criminal procedure law has regulated the settlement of criminal cases committed by TNI soldiers through the court, but before the case is heard in court, the first thing that is done is the process of examining the case against the suspect which is divided into several processes, namely the investigation process, case submission and prosecution, the examination stage at trial, and finally the stage of implementing the decision.

The military criminal law process consists of two main stages. The first stage is the investigation, which is conducted by the superior officer entitled to punish (ANKUM), assisted by the military police and military prosecutors. Investigations are based on reports or complaints from the military, the general public, victims, or perpetrators caught red-handed. The second stage is the submission and prosecution of the case, which is under the authority of the case submission officer (PAPERA). In military courts, the prosecution process is carried out by the military prosecutor who is responsible juridically to the general prosecutor and legally to PAPERA. If the case file received is incomplete, the military prosecutor returns it to the military police. However, if it meets the formal and material requirements, the military prosecutor makes a legal opinion letter and a proposal for case settlement to PAPERA.

The third stage is the examination in court, at this stage the judge can freely determine who will be examined first. Basically, the trial process in military court is also the same as the trial process in general, which is open to the public, but is excluded for criminal cases of decency due to protecting the rights of victims.

The last stage is the imposition of a verdict and the implementation of the Judge's decision, the existence of a Judge's decision in a criminal case is considered very important to resolve a criminal case. With the judge's decision, it can also provide legal certainty to the defendant and the parties so that they can determine the next legal steps both at the appeal and cassation levels. There are three types of decisions in criminal cases based on the Criminal Procedure Code and Law Number 31 of 1997 concerning Military Justice, namely acquittal from all charges, acquittal from all charges, and conviction.

A verdict of acquittal from all charges is a decision made by a Military Judge when the defendant is not legally and convincingly proven to have committed a criminal offense as charged by the Military Oditur. Meanwhile, a decision to be released from all legal charges occurs when the Military Judge states that the defendant is guilty, but his actions are not

criminal in nature but are civil, administrative or customary in nature. And the last is a decision of punishment occurs when the Military Judge states that the defendant is legally and convincingly proven to have committed a criminal offense and the contents of the decision are the determination of punishment for the defendant.

Article 6 of the Military Criminal Code regulates criminal sanctions in the form of basic punishment, such as death penalty, imprisonment, confinement, and closure, as well as additional punishment, such as dismissal from military service, demotion, and/or deprivation of certain rights. However, in practice, some criminal decisions in cases of domestic violence deviate, where the Military Court judge decides that "The Military Oditur's charges cannot be accepted" and the case is declared Niet Ontvankelijke Verklaard (N.O), even though this N.O concept is not known in criminal procedure law and is more common in civil cases. While Niet Ontvankelijke Verklaard or N.O decisions are not known in criminal procedure law and these decisions are generally used in civil cases, this can be seen in several military court decisions as follows:

Table 4

Domestic violence cases decided by Niet Ontvankelijk Verklaard (N.O)

No	Decision Number	Jurisdiction of the Court	Level of Judgment	The Verdict
1	25-K/PMT-II/AD/III/ 2022	Jakarta High Military Court II	First	the prosecution of the military prosecutor is inadmissible or
2	18-K/PMT-II/AU/I/2022	Jakarta High Military Court II	First	the prosecution of the military prosecutor is inadmissible
3	110-K/PM-II-08/AD/III /2022	Jakarta Military Court II	First	the prosecution of the military prosecutor is inadmissible

Table 5

Domestic violence cases that are not decided by Niet Ontvankelijk Verklaard (N.O)

No	Decision Number	Jurisdiction of the Court	Level of Judgment	The Verdict
1	46-K/PMT II/AD/VIII/2022	Jakarta High Military Court II	First	Criminalization
2	57-K/PMT II/AD/X/2022	Jakarta High Military Court II	First	Criminalization
3	35-K/PMT II/AL/X/2023	Jakarta High Military Court II	First	Criminalization

The Niet Ontvankelijke Verklaard (N.O) decision is a judge's decision stating that the lawsuit cannot be accepted due to formal defects, such as not meeting the requirements of Article 123 paragraph (1) HIR, having no legal basis, containing obscuur libel defects, being ne bis in idem, violating absolute or relative competence, or the object of the lawsuit is unclear. In the case of domestic violence by TNI soldiers, the judge made a legal breakthrough by deciding the case N.O instead of acquitting, releasing, or imposing a sentence. This

breakthrough shows the special consideration of the judge to deviate from the Criminal Procedure Code and Law No. 31/1997 on Military Justice.

The first consideration of the Judge is that the victim has revoked her complaint before the main examination of the case, where the main examination of the case is when the Judge has declared “the trial is open to the public” and the parties have been checked for the truth of their identity. The revocation of the complaint is regulated in Article 75 of the Criminal Code which explains that the person as a victim who filed a complaint, has the right to withdraw the complaint within a period of three months after the complaint is filed.

When referring to decisions Number 25-K/PMT-II/AD/III/2022, Number 18-K/PMT-II/AU/I/2022, and Number 110-K/PM II-08/AD/III/2022, it is known that the revocation of the complaint by the victim has exceeded three months and has violated Article 75 of the Criminal Code, but the judge still granted the request. According to Captain Arinta Mudji Pranata as a Judge at Military Court III-15 Kupang explained that this was because the Judge used Supreme Court Decision Number 2238 K/Pid.Sus/2013 dated March 5, 2014 and Supreme Court Decision Number 1600-K/Pid/2009, where the decision explained that “there has been a peace agreement between the victim and the defendant and agreed to build a household again so that the balance that was disturbed due to the criminal act has returned.

It must be recognized that the peace between the defendant and the victim has a high value, because if this case is terminated, the benefits are greater than if the case is continued”. Furthermore, Captain Arinta Mudji Pranata also explained that with the deviation of Article 75 of the Criminal Code because considering one of the objectives of criminal law is to restore the balance that occurs due to criminal acts.

The judge granted the revocation of the victim's complaint in a domestic violence case, despite violating Article 75 of the Criminal Code, on the grounds that domestic violence is a complaint offense that allows the revocation of the complaint. A withdrawal can be made if the violence experienced by the victim does not cause serious pain, does not prevent daily work, or does not interfere with livelihood. After studying the case file, the judge found no serious impact on the victim, and the victim and defendant had reconciled. In addition, the judge considered the value of justice in this case, prioritizing justice as the highest legal norm even at the expense of legal certainty, in accordance with the principle that the purpose of law is to create certainty, benefit, and justice.

Considering that the purpose of criminal law is to restore the balance that occurs due to criminal acts and the purpose of the establishment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence is one of which is to maintain the integrity of a harmonious

and prosperous household, the Judge is of the opinion that even though the decision contains a violation of the Law in it, it contains justice in it.

Furthermore, Colonel Arwin Makal also explained that Judges use progressive legal theory where Judges are not the mouthpiece of the Law as explained in positive legal theory. Because the Judge is not the mouthpiece of the Law, the Judge can make a legal breakthrough with the aim of harmonizing family relationships, because if the case of domestic violence, in which the complaint has been revoked by the victim, continues, it will result in the breakdown of household relations again, which is contrary to the purpose of the establishment of criminal law and Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

The third consideration of the Judge was that the Judge used the principle of speedy, simple, and low cost justice where this principle is expressly stated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power. The principle of speedy justice is a court that is not protracted in resolving cases, the principle of simplicity is the examination and settlement of cases in court carried out in an effective and efficient manner, and the principle of light costs is that the cost of cases can be reached by the community.

This principle has been applied in the decision of the domestic violence case at the Military Court because it has been carried out quickly where the Judge granted the revocation of the victim's complaint and quickly decided Niet Ontvankelijke Verklaard or N.O. The judge also implemented the principle of simplicity, because the examination between the victim and the defendant was effective and had reached a mutual agreement, and the Judge has also implemented the principle of light costs where with the Niet Ontvankelijke Verklaard or N.O decision, the case costs are borne by the state so that the victim and the defendant are not burdened by costs. So that based on these considerations, the Judge is of the opinion and states that the Prosecution of the Military Oditur against the defendant cannot be accepted and the defendant's case is decided Niet Ontvankelijke Verklaard or N.O.

In interviews with Captain Arinta Mudji Pranata and Colonel Arwin Makal, it was agreed that military justice recognizes two types of decisions: criminal (punishment) and non-criminal decisions, such as acquittal, discharge, and Niet Ontvankelijke Verklaard (N.O). In military justice, an N.O verdict can be rendered if the defendant is dead, permanently disabled, unable to appear in court (as in the case of desertion), the criminal offense has expired, or the victim's complaint is withdrawn before the examination of the case. Article 251 of Law No. 31/1997 describes N.O verdicts as being recognized at the Judicial Review (PK) level, but according to Captain Arinta, this article is not entirely relevant to current developments in criminal law. The main challenge in judicial power is to balance legal certainty, justice, and expediency, where

judges can make legal breakthroughs to maintain family relationships, especially in cases of domestic violence with revoked complaints. This principle is in line with Law No. 48 of 2009 which guarantees free judicial power, giving judges the freedom to find the law in order to achieve legal objectives.

Legal discovery is the process of law formation carried out by judges and/or officers based on the law to resolve concrete legal events. Judges are required to make legal discoveries because Judges cannot reject a case submitted to them if the rules governing the case are unclear or do not exist. Article paragraph (1) of Law Number 48 of 2009 concerning Judicial Power explains that "Courts try according to the law without discriminating against people", thus Judges must basically remain within the legal system and must not get out of the law.

Complaint is a right owned by the victim so that the complaint can determine the prosecution or absence of prosecution because it concerns the interests of the victim, therefore for the case of a complaint offense, a period of time for revocation of the complaint has been given which is regulated in Article 75 of the Criminal Code. Article 75 of the Criminal Code explains that the victim who files a complaint has the right to withdraw the complaint within a period of three months after the first submission. This is so that the victim can reconsider the impact that will occur to the victim if the complaint is continued or not continued.

Domestic violence cases are complaints where the victim must make a complaint to the authorities to be followed up legally, but in some cases the victim has withdrawn the complaint on the grounds that both parties, such as the husband and wife, have reconciled where the husband has apologized to the wife and promised not to commit violence again and the problem has been resolved through consensus. However, it is not uncommon to find that the victim's withdrawal of the complaint violates Article 75 of the Criminal Code where the withdrawal of the complaint exceeds the three-month time limit.

Regarding the regulation of the revocation of complaints that have passed the time, there are no provisions governing it, only limited to the revocation of complaints with a period of 3 months, namely in Article 75 of the Criminal Code. Thus, the judge made legal discoveries by using historical flow because the judge used Supreme Court Decision No. 1600 K / Penal Code / 2009 which explained that it was permissible to revoke the complaint even though it had expired. And the legal consequences that occur if the complaint is withdrawn by the victim then the prosecution will be canceled.

It can be seen that the withdrawal of a complaint does not stop an existing investigation, and if the withdrawal of a complaint occurs after a period of three months, then a subsequent withdrawal of the complaint cannot be made. The above provisions do not apply to Decision

No. 1600K/Pid/2009. This is due to the Supreme Court's emphasis on prioritizing peace between the two parties involved.

Thus, the legal breakthrough made by the Judge by granting the revocation of the complaint by the victim will cause legal uncertainty because the revocation of the complaint made more than three months makes the victim unable to re-file a complaint in the future and is very beneficial to the defendant.

In addition, based on the decision that the author used in his consideration, the Judge explained that there had been a revocation of the complaint by the victim before the examination of the subject matter of the case so that peace between the two parties had been reached, based on this, the Judge argued and stated that the Military Oditur's Prosecution could not be accepted and the defendant was decided Niet Ontvankelijke Verklaard or N.O..

According to Captain Kum Arinta Mudji Pranata, it is explained that in military courts the Military Oditur's demands are unacceptable, called Niet Ontvankelijke Verklaard or N.O. While the meaning of "the Military Oditur's demands are unacceptable" with Niet Ontvankelijke Verklaard or N.O is different because Niet Ontvankelijke Verklaard or N.O. is a civil case verdict that explains the decision. O is a civil case decision that explains that the lawsuit cannot be accepted because there is a formal defect, and for the Military Oditur Prosecution, it cannot be accepted when the criminal case has expired or there is a ne bis in idem situation, so with these two definitions, the meaning between "rejected lawsuit" and "rejected prosecution" is different.

With this explanation, in the opinion of the author, the Judge's consideration is ineffective because it is contrary to existing facts or law, besides that the legal consequences of the Judge's erroneous consideration are that the aggrieved party can file an appeal or cassation to a higher court to correct the error so that it can take additional time and costs, this is not in accordance with the principles of fast, simple and light justice.

2. Sentencing in Domestic Violence Cases in Military Courts

Terminologically, violence is an aggressive behavior carried out by a person against another person with deliberate intent that can cause the victim to suffer both physically and mentally. The criminal case of domestic violence is a lex specialis which means that the criminal offense is regulated outside the Criminal Code so that it is included in a special crime. Where domestic violence has been regulated in a special regulation, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT).

Perpetrators of domestic violence will inevitably end up with a punishment in the form of imprisonment if the settlement of the case is carried out through ordinary criminal procedure law, where the victim of the crime will be displaced because the perpetrator has been sentenced to prison and the victim cannot be compensated by the perpetrator so that the goal of justice from the law is not obtained.

Case settlement through the courts usually requires a long time and high costs where the court's decision can only satisfy one party, causing dissatisfaction from the other party. With these facts, it is time to change the settlement of cases through litigation to settlement through non-litigation (outside the court) so that the media is needed in the criminal justice system to be able to accommodate the settlement of the case using restorative justice.

Restorative justice is a system in criminal justice that uses an approach that focuses on recovery, reconciliation, and restoration of damaged relationships due to the criminal offense committed by the perpetrator. In principle, restorative justice has existed since the time of Aristotle but at that time it was known as the principle of reciprocity. This approach focuses on resolving the source of the problem and the impact of the crime on the victim, offender, and the general public such as psychological, emotional, and social impacts. It can be concluded that restorative justice is a criminal justice system to fulfill the material, emotional, and social needs of victims of crime.

Restorative Justice is a criminal problem solving process that is conducted outside the criminal justice system, involving victims, perpetrators, and related parties including the victim's family to reach an agreement and settlement.

By applying restorative justice is an alternative to resolving criminal cases from the initial settlement through the criminalization process to the mediation and dialogue process between victims, perpetrators, and other parties who are related and feel harmed by the criminal act. The purpose of the application of restorative justice is to solve problems by creating an agreement on the settlement of the consequences of a criminal offense that focuses on recovery rather than just punishment and retaliation. However, applying restorative justice in criminal cases does not eliminate criminal liability.

The juvenile justice system is the only legal basis in the form of laws in the application of restorative justice, but given the importance of the application of restorative justice in legal practice, there are currently several investigating institutions in general criminal justice that regulate the application of restorative justice including:

1. National Police Chief Regulation Number 8 of 2021 on Handling Criminal Offenses Based on Restorative Justice.
2. Attorney General Regulation Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice.
3. Regulation of the Attorney General Number PER-006/A/J.A/04/2015 on Guidelines for the Implementation of Diversion at the Prosecution Level.
4. Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.
5. Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of the Indonesian National Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02/2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 on the Implementation of the Adjustment of the Limitation of Minor Crimes and the Amount of Fines, Rapid Examination Procedures and the Implementation of Restorative Justice.
6. Letter of the Director General of the Public Prosecution Service No. 301/2015 on the Settlement of Minor Crimes.

However, not all criminal offenses can be applied restorative justice for settlement, because in applying restorative justice there are several requirements, namely:

1. The criminal offense committed is a minor category (tipiring) and the victim of the criminal offense does not lose Rp2,500,000.00 (two million five hundred thousand rupiah).
2. The criminal offense committed by the perpetrator is included in the complaint offense.
3. The crime, if charged, carries a maximum penalty of five years imprisonment, including jinayat punishment according to qanun.
4. The perpetrator of the crime is a child who has been diversioned but did not succeed.
5. Traffic crime which is a crime.

The application of restorative justice cannot be carried out if the victim and defendant refuse to reconcile, there is a power of attorney relationship, or the defendant repeats a similar criminal offense within three years after the court decision is legally binding, as stipulated in Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Resolving Criminal Cases Based on Restorative Justice, including jinayat cases and military crimes. In the general

criminal justice system, restorative justice can be applied at the investigation, prosecution, and trial stages, with formal requirements such as peace between parties and the responsibility of the perpetrator to fulfill the rights of the victim, as well as material requirements such as not causing public unrest, not triggering divisions, and not including serious crimes such as terrorism, corruption, or threats to the state. In cases of domestic violence, the application of restorative justice begins with an investigation to determine the category of offense and its impact, followed by mediation efforts if both parties agree. If mediation fails, the case proceeds to the Public Prosecution Service for further processing.

When the Prosecutor's Office has received the case file from the Police, then the prosecution will be carried out. The application of restorative justice at the prosecution stage is based on Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. At this stage the Public Prosecutor (PU) seeks restorative justice by summoning the victim, perpetrator, and the parties involved who feel affected by the criminal offense to implement a restorative justice mechanism. If at the time of the summons the victim agrees to carry out restorative justice, then the next stage will be a peace process where the Public Prosecutor acts as a facilitator who brings the parties together to reach peace, but if they refuse to carry out restorative justice then the case will be submitted to the Court by stating the reasons for the refusal of peace.

During the trial process, judges are encouraged to seek peace and prioritize restorative justice in their decisions. The judge gives the defendant the opportunity to respond to the prosecutor's indictment on the first day of trial and checks if there is an amicable agreement between the victim and the defendant before the trial. If an amicable agreement has been reached beforehand, the judge may consider it in the decision and proceed with the examination of the case. In the case of a complaint offense, the amicable agreement may or may not include certain conditions, and the victim may withdraw the complaint within the time limit set by law. This withdrawal is considered legally valid if signed in the presence of a judge, who can then declare the prosecution forfeited or inadmissible. If there has been no reconciliation, the judge encourages both parties to reach an amicable agreement.

By looking at this explanation, it can be seen that although in the general criminal justice system the application of restorative justice has not been regulated in Law Number 8 of 1981 concerning Criminal Procedure Law, each institution such as the Police, Prosecutor's Office, and Court is authorized to apply restorative justice. In contrast to the military justice system, which cannot simply apply the rules that apply in general courts related to restorative justice, because the military criminal procedure law has a very important part in resolving criminal

cases committed by TNI soldiers, namely the Submission Officer (PAPERA). The authority of PAPERA is regulated in Article 123 of Law Number 31 of 1997 concerning Military Justice and has a very important role, such authority includes:

1. Order the investigator to conduct an investigation.
2. Receive a report on the implementation of the investigation.
3. Order forcible measures to be taken.
4. Extend detention.
5. Receive and request the Oditur's opinion on the settlement of a case.
6. Submitting a case to the competent court for examination and trial.
7. Determine the case to be resolved according to the Disciplinary Law.
8. Closing the case in the interest of the law and/or military interest.

By knowing the authority of PAPERA which has been explained in Article 123 of Law Number 31 of 1997 concerning Military Justice, it is not the Military Police (POM) or the Military Oditur who can determine whether or not to apply restorative justice to criminal cases committed by TNI Soldiers, but PAPERA who has the authority to decide. While POM and the Military Advocate only wait for direction from PAPERA whether the criminal offense committed by TNI Soldiers will be resolved through restorative justice, or resolved using military disciplinary law, or the case is resolved through the Military Court.

According to the Ad Hoc Military Corruption Judge of the Supreme Court as well as a lecturer at the Faculty of Law at the High Military Law School (STHM) and Trisakti University, Mr. Agustinus Purnomo Hadi, the application of restorative justice in military justice needs to be regulated, regarding how a case can be resolved through mediation and peace processes outside the military criminal procedure system. Article 123 of Law Number 31 of 1997 concerning Military Justice which regulates the authority of PAPERA in the long term also needs to be updated by adding one PAPERA authority to be able to determine certain criminal cases committed by TNI Soldiers can be resolved through restorative justice with mediation or peace.

Regarding the revision of Article 123 of Law Number 31 of 1997 concerning Military Courts which regulates the authority of PAPERA, it takes a long time so that to fill the legal vacuum until the article is revised, a legal basis is needed under the law such as the TNI Commander Regulation as a guideline for the application of restorative justice in each military investigating agency. Regarding Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice which also applies to military courts, where the regulation is only binding on Military Court institutions in the trial

process, meaning that it is only binding on court judges and court officials and cannot be applied to investigating institutions such as POM, Military Advocates and PAPERA institutions.

According to Agustinus Purnomo Hadi, the settlement of criminal cases involving TNI soldiers through restorative justice must be based on the authority and orders of PAPERA. If mediation fails to reach an amicable agreement, the case will be submitted to the Military Court with a skeppera, and the judicial process uses Supreme Court Regulation Number 1 of 2024, no longer the TNI Commander's Regulation. In the application of restorative justice, judges generally hand down a conditional verdict or acquit the defendant of the charges because even if found guilty, the defendant cannot be held criminally responsible. However, in a case of domestic violence, the Military Court once handed down a Niet Ontvankelijke Verklaard (N.O) verdict due to an amicable agreement between the victim and the perpetrator before the trial, which was considered in line with the principles of restorative justice despite contradicting military and general criminal procedural law. The three types of decisions in criminal cases are sentencing (Article 193 paragraph 1 of KUHAP), acquittal on the grounds that the act is not a criminal offense (Article 191 paragraph 2 of KUHAP), and acquittal due to lack of legal evidence (outside the Article of KUHAP).

So with this explanation, it can be seen that in criminal cases it is not known as a Niet Ontvankelijke Verklaard or N.O. The Judge's consideration in imposing a Niet Ontvankelijke Verklaard or N.O decision in a case of domestic violence committed by TNI Soldiers is that the Judge is of the opinion that in resolving the case using the principle of restorative justice where a peace agreement between the victim and the perpetrator has occurred before the case examination process. However, this consideration is contrary to the principle of restorative justice itself because basically the application of the principle of restorative justice does not aim to eliminate criminal liability.

Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Settlement of Criminal Cases Based on Restorative Justice explains that peace efforts between victims and perpetrators are carried out when the indictment is read to the defendant and the defendant states that he understands the charges, then the judge provides an opportunity to defend himself. If before the trial there is an amicable agreement between the victim and the defendant, the judge can consider the agreement in the decision. However, in the Niet Ontvankelijke Verklaard (N.O) decision at the Military Court in a case of domestic violence, the judge has not examined the merits of the case, so does not have sufficient legal basis to impose an N.O decision. A more in-depth examination process is

needed so that the judge can assess the facts objectively and in a balanced manner, paying attention to justice, benefits, and legal certainty. Although the judge argued that the decision created justice due to the mutual forgiveness between the victim and perpetrator, this contradicts the principle of restorative justice which emphasizes compensation for the victim and rehabilitation for the perpetrator. Restorative justice should focus on restoring harm and restoring the original conditions damaged by the crime, which was not achieved in the N.O. decision.

Domestic violence committed by the defendant as a TNI Soldier has contradicted the Sapta Marga Soldier's Oath and the 8 (eight) TNI obligations, including upholding the honor of women and not harming and hurting the people, where the defendant's actions have reduced the level of public trust in TNI institutions that are free from the practice of domestic violence.

For TNI Soldiers who commit criminal offenses will be subject to criminal sanctions, where the essence of punishment for a TNI Soldier is a coaching effort rather than an act of providing a deterrent effect or retaliation as long as the convicted person undergoes punishment until he is reactivated in his military service. In addition, the purpose of the punishment which is coaching in nature is not only aimed at TNI Soldiers who commit criminal offenses but is aimed at other TNI Soldiers so as not to commit similar acts to the convicted person.

The existence of a peace agreement between the victim and the defendant cannot eliminate the defendant's guilt as an excuse as regulated in Article 44 of the Criminal Code which explains that a person cannot be convicted if he commits an act for which he cannot be held accountable, this is because the perpetrator's soul is defective in growth or disturbed due to illness.

In addition, the existence of a peace agreement between the victim and the defendant also cannot be used as an excuse as stipulated in Article 48 of the Criminal Code because the defendant's actions were not influenced by overmacht and there were no elements that could eliminate the punishment. However, the judge in imposing a punishment decision must consider the elements of the defendant's evil and good character, this is explained in Article 8 paragraph (2) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

In the integrative theory of punishment, it is explained that criminal acts are activities that disturb the balance, harmony, and harmony that can cause damage to individuals or society. So that with the existence of punishment for the perpetrator of a criminal offense is to repair the damage that has occurred due to the criminal offense committed by the perpetrator so that the punishment decision imposed by the Judge contains the following elements:

1. Humanitarian in nature, which means that the punishment imposed by the judge still upholds the dignity of the perpetrator of the crime.
2. Educative, which means that the punishment imposed by the judge is able to make people fully aware of the actions they have committed, so that the perpetrators have a positive and constructive spirit for crime prevention and control efforts.

From this explanation, for criminal cases there should be no Niet Ontvankelijke Verklaard or N.O. If during the examination of the main case the defendant is proven to have committed domestic violence against the victim, but the complaint has been withdrawn by the victim and there has been reconciliation between the victim and the defendant, then in the opinion of the author it is appropriate for the defendant to be sentenced to probation in accordance with his actions by considering the sense of justice that grows and develops in society.

Probation is a system in which a convicted person remains in the community under close supervision, without having to serve a direct prison sentence. Probation is implemented under the supervision of a probation officer and requires regular reports on the offender's behavior. It focuses more on monitoring the offender's behavior during the probationary period, which usually ranges from two to three years. During this time, the convicted person can lead a normal life in the community but remains under the supervision of the designated authority.

According to the author's opinion, for TNI Soldiers who commit domestic violence, even though the victim and the perpetrator have forgiven each other, ideally the Judge should impose a probationary sentence because the type of probationary sentence is also a type of punishment and in no way constitutes an exemption or elimination, while the probationary period determined by the Judge aims to educate the perpetrator to be more careful and able to improve himself and the author assesses that the commander of the unit or superior and his unit will be able to foster and supervise the behavior of the perpetrator during the probationary period.

By applying probation, the offender is more focused on getting supervision under the supervision of probation officers and must report regularly on his behavior without directly activating the prison sentence during the probation period. Whereas probation has a function as a tool of guidance and supervision to ensure that the offender does not repeat his actions during the probation period, and the application of probation refers more to the supervision of the offender's behavior, with little emphasis on compensation or other conditions.

5. CONCLUSION

In criminal cases, there are at least three types of judges' decisions that have been regulated both in the Criminal Code (KUHP) and Law Number 31 of 1997 concerning Military Justice, namely acquittal from all charges, acquittal from all charges, and conviction. However, in fact, in cases of domestic violence in the Military Court, a court decision was found that ruled "The Military Oditur's prosecution is inadmissible and the defendant's case was decided Niet Ontvankelijke Verklaard or N.O". Where this type of decision is not known in criminal cases but is applied to civil cases, and the Judge's consideration in imposing a Niet Ontvankelijke Verklaard or N.O decision is that first the victim has withdrawn his complaint before the examination of the subject matter of the case, even though the withdrawal of the victim's complaint violates Article 75 of the Criminal Code, the Judge still grants the request because he uses Supreme Court Decision Number 2238 K/Pid.Sus/2013 and Supreme Court Decision Number 1600-K/Pid/2009 which explains that there has been peace between the victim and the perpetrator and if this case is terminated, the benefits are greater than if the case is continued. The judge also granted the revocation of the victim's complaint because there was no disease or obstacle to the victim to carry out his daily work and did not interfere with the victim's livelihood as a result of the criminal act. The second consideration of the judge was that the judge prioritized the value of justice in the settlement of the case even though the decision contained a violation of the law in it. And the third consideration of the judge was that the judge used the principles of fast, simple, and low cost justice.

With the knowledge of the Judge's consideration in imposing a Niet Ontvankelijke Verklaard or N.O decision in a domestic violence case, the settlement of the case uses the principle of restorative justice where a peace agreement between the victim and the perpetrator has occurred before the case examination process. However, in criminal cases it is not permissible to use the Niet Ontvankelijke Verklaard or NO decision because using restorative justice in resolving criminal cases does not essentially eliminate criminal liability, therefore, in the author's opinion, ideally the judge should impose a probationary sentence because the type of probationary sentence is also a type of punishment and in no way constitutes exemption or elimination, while the probationary period determined by the judge aims to educate the perpetrator to be more careful and able to improve himself.

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