

The Authority of the Military Prosecutor in Handling Criminal Acts of Violence in Households Committed by Members of the Indonesian National Armed Forces

(Case Study of Military Court Decision No.235-K/PM I-02/AD/XI/2016)

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ABSTRACT

Law No.26 of 1997 concerning the law of disciplines of soldiers of the Indonesian National Armed Forces and the decision of the commander of the Indonesian National Armed Forces No.Kep/22/VIII/2005 dated August 10, 2005, both governing the laws and regulations of the discipline of soldiers and a soldier violating this rule will get sanctions. Household integrity and harmony can be disrupted if the quality and self-control cannot be controlled, which in turn can cause domestic violence so that there will be a sense of discomfort or injustice towards people within the scope of the household. Examples of cases where a soldier of Sergeant Mayor Surono committed domestic violence against his legal wife named Indra Ningsih, because the defendant was burned with jealousy to see his wife together with First Lieutenant Assistant Edi Junaedi, so the defendant did a beating in the wife's left eye. The Panel of Judges assured that the defendant had committed a criminal offense. Anyone who commits physical violence in the household sphere is carried out by the husband against his wife who does not cause illness or obstruction to carry out his occupation or livelihood or daily activities as regulated in Art.44 Par.(1) Jo. Par.(4) of The Law of the Republic of Indonesia No.23 of 2004 concerning the elimination of domestic violence, due to the actions of the defendant, the defendant is sentenced for four months. The research method was a normative juridical legal research of descriptive analysis by conducting library research in order to obtain

secondary data needed, including primary, secondary, and tertiary legal materials related to the problem. The entire data was collected by the method of library research and field study. The results showed that the Military Prosecutor I-02 Medan in handling domestic violence cases is regulated in Art.71 of the Military Court Law No.27 of 1997, they are receiving a report or complaint, taking the first action at the time and place of the incident, seeking information and evidence, telling someone to stop, making a forced effort (arrest, search, detention, confiscation, and examination of documents), taking fingerprints and photographing someone, calling someone to be heard as a suspect or witness, asking for help expert, carrying out other actions, carrying out orders that are punitive boss to detain the suspect, and reporting the results of the implementation of the investigation to the supervisor who has the rights to punish.

Keywords: Authority of Military Prosecutor, Domestic Violence, Indonesian National Armed Forces

INTRODUCTION

According to The Law No.34 of 2004, the Indonesian National Armed Forces as a means of defense for the Unitary State of the Republic of Indonesia has a duty to carry out state defense policies to uphold state sovereignty, maintain territorial integrity and protect national safety, carry out military operations for war and military

operations other than fiber war, participate actively in peacekeeping tasks regional and international. Law No.26 of 1997 concerning disciplinary law for soldiers of the Indonesian National Armed Forces and the decree of the commander of the Indonesian National Armed Forces No.Kep/22/VIII/2005 dated 10 August 2005, both of which regulate the law and disciplinary regulations for soldiers and a soldier violating these rules will get penalty. Military crime is an act of a military person that is contrary to the principles of military law which is subject to criminal sanctions. The criminal act is committed by means of violence or the threat of violence. Whereas how the violence was carried out or what evidence is used, each depends on the case that arises.

The research case that will be discussed in this study was based on a verdict with No.235-K/PM I-02/AD/XI/2016, in which a soldier with the rank of Sergeant Mayor Surono who committed domestic violence against his legal wife named Indra Ningsih and has four children. The defendant on behalf of Surono committed domestic violence against his wife because the defendant was looking for his wife not to be found and the defendant was burned with jealousy seeing his wife come alone with First Lieutenant Assistant Edi Junaedi at night so that the defendant struck his wife's left eye. Whereas previously the defendant's relationship with his wife had begun to split because the defendant often drank alcohol and the defendant often insulted and insulted and threatened to divorce his wife. Based on the case, the Panel of Judges convinced the defendant to have committed a criminal act. Everyone who committed an act of physical violence within the scope of the household was committed by the husband against his wife who did not cause disease or obstruction from carrying out his job or livelihood or daily activities as regulated in Art.44 Par.(1) Jo. Par.(4) The Law of the Republic of Indonesia No.23 of 2004

concerning the elimination of domestic violence.

The threat of punishment is an administrative sanction, namely postponement of rank and disrespectful dismissal, if proven to have committed a criminal act of domestic violence. For additional crimes in the form of dismissal from military service or demotion or postponement of rank, of course it is regulated in the second general criminal law. Imposing a sentence that is not accompanied by a delay in rank is basically an act of education or guidance rather than an act of imprisonment or retaliation. For a military who is not dismissed after serving his sentence he will be reactivated in military service. In addition to criminal sanctions against military personnel who are criminalized on domestic violence, administrative sanctions can also be subject to administrative sanctions. These administrative sanctions can be in the form of postponement of promotion, unable to continue education, difficulty in occupying certain positions.

The objectives of this study were to (1) find out the legal rules for military prosecutors in dealing with domestic violence committed by members of the Indonesian National Armed Forces, (2) find out the factors that cause members of the Indonesian National Armed Forces to commit domestic violence in North Sumatera, and (3) find out the authority of military prosecutors in handling criminal cases of domestic violence committed by members of the Indonesian National Armed Forces.

II. THEORETICAL FRAMEWORK

2.1 Law Enforcement Theory

1. Judging from the point of view of the subject

In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based

on the prevailing legal norms, means he is carrying out or enforcing the rule of law.

2. Judging from the point of view of the object

In a broad sense, law enforcement includes the values of justice which include the sound of formal rules and the values of justice that exist in society. In a narrow sense, law enforcement only concerns the enforcement of formal and written regulations.

2.2 Criminal Policy Theory

According to Arief (1996), the substance of the criminal policy is the limitation of power both owned by the people and the power/authority of law enforcement to run and function properly. In more detail the criminal policy regarding the scope, a series of processes starting from concretization, application, functionalization with the following stages, they are: (1) formulation/legislative policies, namely the formulation stage and the preparation of criminal law, (2) applicative/judicial policies, namely the stage of implementing criminal law, and (3) administrative/executive policies, namely the stage of implementing criminal law^[4].

III. RESULTS AND DISCUSSION

3.1 Legal Rules for Military Investigators in Handling Domestic Violence Committed by Members of the Indonesian National Armed Forces

3.1.1 Military Prosecutors in Dealing with Domestic Violence

Based on the Art.45, The Law No.31 of 1997, Prosecutors are bodies within the military (Indonesian National Armed Forces) and Police of the Republic of Indonesia which exercise the powers of the State Government in the field of prosecution and investigation based on delegation from the commander (Art.1 No.2). The Prosecutors (Art.49) consist of: (a) Military Prosecutors; a prosecutorial body at the Military Court, (b) High Military Prosecutors; a prosecutorial body at the

High Military Court, (c) Prosecutors General; the highest prosecuting body in the Military or the Armed Force; and (d) Battle Military Prosecutors; a prosecutor at the Military Battle Court according to Art.50 the organizational structure and procedures of the Prosecutors are determined by a Decree of the Commander.

Prinst (2003) stated that within the jurisdiction of the Military Prosecutors, units can be formed technical implementers as needed. Its formation is mainly based in consideration of the extent of the legal area and the number of cases. In order to speed up case resolution and legal service approaches for military units (Armed Forces).

Based on the Art.12, The Law No.31 of 1997, Military Prosecutors (Art.64 Par.1 have the following duties and powers:

- (1). Carrying out prosecution in a criminal case in which the defendant:
 - (a) Soldiers with the rank of Captain and below (Captain, First Lieutenant, Second Lieutenant, First Lieutenant Assistant, Second Lieutenant Assistant, First Sergeant, Second Sergeant, Sergeant, Chief Corporal, First Corporal, Second Corporal, Corporal, Chief Soldier, First Private, Second Private, and Soldiers);
 - (b) Based on the law, they are equated with soldiers with the rank of Captain and below;
 - (c) Members of a group or agency or that equated or considered a Soldier based on the law invited by the rank of Captain and below;
- (2). Carrying out the Judge's order or the Court's decision in environment of military court or court in the environment General Court;
- (3). Performing additional checks;
- (4). Military Prosecutors (Par.2 can be authorized to conduct investigations;
 - (a) Actions by a person or group of people causing injury or death of another person, or causing physical damage or property to another person, and
 - (b) Force.

3.1.2 Procedures for Submission of Cases of Domestic Violence to Military Courts

Law No.31 of 1997 concerning Military Courts, the duties of Military Prosecutors are basically the same as the tasks performed by the Prosecutors at the District Courts (Saebani (2009)). However, even though there are many similarities, there are still differences as described below.

Salam (1994), the provisions of the Criminal Procedure Code, the power of the prosecutor to conduct a preliminary examination/investigation are transferred entirely to the State Police, whereas according to the provisions of the Military Criminal Procedure Law this is possible in accordance with the provisions of the following articles:

Based on the Art 69, the investigators are (a) superiors who have the right to punish, (b) military police; and (c) prosecutors.

According to Salam (1994), military prosecutors who handle a criminal case sit at the trial as public prosecutor, as referred to in Art.64, namely: "Military Prosecutorates have the duty and authority to prosecute a criminal case".

1. Case Delegation Process

The case submission to a military court is carried out by the Case Transfer Officer as referred to in Art.122, namely:

1. Submitting Officers are:
 - a. Commander;
 - b. Chief of Staff of the Indonesian National Armed Forces, Chief of Staff of the Naval National Army, and Chief of Staff of the Air Force National Army.
2. The Case Handover Officer as referred to in Paragraph (1) may appoint the commander/head of each subordinate unit at the lowest level of the Commander of the Military Resort, to act as Case Handover Officer.

Salam (1994) suggested that it has been described above that the prosecutor after receiving the results of the investigation from the investigator will immediately study and examine whether the

investigator's results are complete or not. If the formal requirements are incomplete, the Prosecutor asks the Investigators to immediately complete them. If the investigator's results are not sufficient, the Prosecutor shall conduct additional investigations to complete or return the case file to the Investigator accompanied by instructions on the matters that are completed.

3.1.3 Legal Rules for Military Prosecutors in Handling Domestic Violence for Members of the Indonesian National Armed Forces

1. Code of Discipline Law

In the life of the army one wants order and discipline for all its members. For members who violate military discipline regulations, they may be subject to disciplinary punishment, which is regulated in the Disciplinary Penalty Code, which is regulated in the Disciplinary Law. Disciplinary violators are sentenced to direct punishment by the direct superior of the offender, in a trial of Disciplinary Judges, which consists of the Army Commander and his staff. According to the Law No.26 of 1997, what is meant by violations of Military Discipline are all acts that are not stipulated in the Criminal Law regulations, actions that are contrary to official regulations, or may not occur in the order or order of the army. Salam (1994), so which is a disciplinary violation, namely:

- a. Not specified in the criminal regulations;
- b. Contrary to an official order or service regulation;
- c. It must not happen in the order and order of the army.

Something that is contrary to an official order or official service, by itself may not occur in the order and order of the army. The intention of the legislators is only to provide a description (*omschrijving*) of the words of the disciplinary violation, so it is not determined, to be able to declare a disciplinary violation.

2. Military Criminal Law and Military Criminal Procedure Code

As Tambunan (2013) suggested that military criminal law and military criminal procedural law are special laws, called special laws with the understanding to differentiate them from general criminal law that applies to everyone. Military criminal law contains regulations which deviate from the provisions stipulated in the general criminal law and only apply to special groups (military) or people because the rules are subject to them. Andrisman (2000) stated that with the existence of military criminal law, it does not mean that general criminal law does not apply to the military, but for the military both general criminal law and military criminal law apply. In the military, in addition to general law (*lex generalis*), a special law (*lex specialis*) also applies. General criminal law is *lex generalis*, the enactment of general criminal law for the military based on Art.103 of the Criminal Code and Art.1 and Art.2 of the Military Criminal Code states firmly that there is a relationship between the Military Criminal Code and the Criminal Code.

3.2 Factors Causing Members of the Indonesian National Armed Forces Can Commit Domestic Violence in North Sumatera

3.2.1 Factors Causing Domestic Violence

3.2.1.1 External Factors

1. A patriarchal culture that places men in the position of being superior to women and applies without change, as if it is natural.
2. Religious interpretation, which is not in accordance with universal religion, namely that the husband may beat his wife on the grounds of educating or the wife does not want to serve the husband's sexual needs, so the husband has the right to beat and the wife is cursed by an angel.
3. The factor that men and women are not positioned equally in society. Society generally believes that the position of men is above women. This also applies

in married life, where the wife is fully owned by the husband.

4. Society still raises boys by educating them so that they believe that they must be strong and courageous and merciless. Men are trained to feel in control of themselves and those around them. If they deviate from this role, then the man is called a weak man, and this designation is very damaging to his male self-respect and dignity. This is what encourages men to do various ways, including violence. With this violence they consider themselves to have masculinity.
5. Culture encourages women (wives) to submit to their husbands, especially economically. This makes the wife very dependent on her husband, and this also causes many wives to be treated arbitrarily by their husbands. A lot of violence is caused because the husband is frustrated at work and unable to solve his problems so he can easily take his ability out on his wife.
6. Society does not consider domestic violence as a social problem, acts as an internal problem between husband and wife, other people should not interfere. People seem to close their eyes to events in the household, because they think that domestic violence is a private matter of husband and wife.
7. The wrong understanding of religious teachings which assumes that men can control women. This kind of interpretation results in a hereditary understanding that religion also justifies husbands beating their wives. This right is given to men (husbands), because husbands have a higher position than wives. In the household, the husband has a role as a leader, provider and has natural "advantages" which are gifts from God.

3.2.1.2 Internal Factors

1. The labelization of women with weak physical conditions tends to be considered the object of the perpetrators

of violence so that this weak conditioning is considered the loser and the defeated. This is often used by men to discriminate against women so that women are not involved in various strategic roles. As a result of this labeling, men often use their power to commit violence against women both physically, psychologically and sexually.

2. The capitalist economic system also causes violence against women. In a capitalist economic system with the economic principle of how to spend a little capital to achieve as much profit, then using women as an economic tool and goal will create a pattern of exploitation of women and their various organs. Therefore, women are a commodity that can be given low or cheap wages.
3. There is no agency that provides direct services (crisis center) that provides psychological and legal assistance for victims of domestic violence.
4. There is trauma in the soul of a soldier who has just finished carrying out his service in the field/war, so that the soldier cannot control his emotions from the heart or physically so that anger and emotions are vented towards his wife.

3.2.2 Impact of Domestic Violence

Farha (1999) stated that every criminal action has an effect or impact. In general, there are two impacts of domestic violence that befell the wife, namely:

1. Short-term impact of domestic violence on wives

In general, what is meant by short-term violence is physical injuries suffered by the victim (injuries, fractures, loss of function of organs and senses, miscarriage, etc.), health and psychological issues (anxiety, depression, battered), woman trauma syndromes, rape syndromes, alcohol and drugs, and the risk of committing suicide, as well as the impact on children's education and growth,

especially in cases of domestic violence).

2. Long-term violent impact

Furthermore, according to Saraswati (2006), other impacts experienced by victims of violence in the household include: (a) psychological impact, (b) isolated, (c) feelings of helplessness, (d) present yourself, and (e) against the health of the wife.

3.3 The Role of Military Prosecutors in Handling Criminal Cases of Domestic Violence Committed by Members of the Indonesian National Armed Forces

3.3.1 Military Investigators

Military Investigators (Art.69) consist of:

1. Superiors who have the rights to punish; direct supervisors who have the authority to impose disciplinary punishments according to the prevailing laws and regulations and have the authority to carry out investigations (No.9). As for the superior who has the right to punish in stages, are as follows:
 - a. Superiors who have the rights to punish in full authority;
 - b. Superiors who have the rights to punish in a limited authority;
 - c. Superiors who have the rights to punish in a very limited authority;
 - d. The top of Superiors who have the rights to give punishment.

The purpose of the authority granted by law is implemented fairly, wisely and appropriately.

2. Military Police and Prosecutors

Investigators (Art.71) have the authority:

- a. receiving Reports or Complaints;
- b. taking the first action at the time and place of the incident;
- c. looking for information and evidence;
- d. telling someone to stop;
- e. making a forced effort;
- f. taking fingerprints and take a picture of someone;

- g. calling someone to be heard and heard as a suspect or witness;
- h. asking for expert help;
- i. taking another action;
- j. carrying out a superior order that is punitive to carry out the detention of the suspect, and
- k. reporting the results of the investigation to the supervisor who has the right to punish.

3. Investigation Process

a. Examination of Suspects and Witnesses

Art.99 of Law No.31 of 1997 determined that: (1) investigators who know, receive reports or complaints about the occurrence of an event which can reasonably be suspected of being a criminal act are obliged to immediately carry out the necessary investigative actions, and (2) in the event that the supervisor who receives the report or complaint is entitled to sentence immediately to hand over the implementation of the investigation to the investigator as referred to in Art.69 Par.(1) letter b or c, they are obliged to carry out the investigation and immediately report it to the superior who has the right to punish the suspect.

b. Arrest and detention

1) Arrest

In the Law on Military Criminal Procedure, namely Law No.31 of 1997 concerning arrest and detention as regulated in Arts.75 to 81.

Art 75 mentions that: (1) for the purpose of investigation, Investigators are authorized to make arrests, (2) the arrest of a suspect outside the position of the superior who has the right to punish him directly can be carried out by the local investigator at the place where the suspect is found, based on a request from the investigator in charge of the case, and (3) the arrest as intended in Par.(1) and Par.(2) shall be carried out by means of a warrant.

Art 77 mentions that: (1) investigators or members of the Military Police or subordinate members who have

the right to punish will carry out the task of arresting people who have the right to punish in relation to showing an arrest warrant which states the identity of the suspect, states the reason for the arrest, a brief description of the criminal case to which he is accused, and the place where he is being examined, (2) in the event of being caught in the red, the arrest is carried out without a warrant, provided that the detainee must immediately submit the suspect and the evidence in his possession to the closest investigator, (3) a copy of the arrest warrant as meant in paragraph (1) is given to the family immediately after the arrest is made, and (4) after an arrest is made, the investigator is obliged to immediately report to the superior who has the right to punish the person concerned.

An arrest based on a warrant can be carried out by a superior who has the right to punish himself, or his subordinates from Section I (Intel) or a Military Police Investigator on the orders concerned. In order to arrest a suspect, the executor of the arrest must carry an arrest warrant in which the arrest warrant includes the identity of the suspect, the reason for the arrest, a brief description of the crime case committed by the suspect and the time of examination.

2) Detention

As stated earlier, that in Law No.14 of 1970 has laid down the principle that “no one can also be subject to arrest, detention, search and confiscation, other than on a written order by a legitimate power in matters according to methods regulated by law”.

The main requirements are:

a. In Matters Regulated by Law

(1) The legal basis for carrying out detention must follow the provisions of the articles in the Military Criminal Procedure Code, namely Arts.78, 79, 80 and 81.

Two types of conditions must be met absolutely:

- a. There are sufficient clues about the suspect’s wrongdoing.

b. The suspect must be able to be charged with a criminal act with the threat of a sentence of 3 months or more (Art.79 Par.(2) Military Criminal Procedure Code.

b. By Order of Legitimate Power

Not everyone can be authorized to carry out detention, but by law certain officials are appointed. In the preliminary examination stage, those who are authorized to carry out detention are:

1. Anyone in the event of being caught red-handed, only to hand over the suspect to the authorities.
2. Any officer who is higher in rank than the suspect, just to immediately hand over to his Superiors who have the right to punish.
3. Superiors who have the right to punish on subordinate members.
4. Submitting Officers towards subordinate members.
5. Military Police Corps and Military Prosecutors in the following matters:
 - a. Caught red-handed, obliged to detain.
 - b. There is a delegation of power from Submitting Officers or Superiors who have the right to punish.
- c. The suspect is outside the jurisdiction of Submitting Officers/Superiors who have the right to punish
- d. The suspect is a board member of military who committed a criminal act while still in active service but then it is no longer clear that the Superiors who have the right to punish/Submitting Officers is.
6. General Prosecutors; the authority to extend detention is Submitting Officers, during trial examination, the authority to hold detention, release and extension is law.

c. In a Manner Determined by Law

The formalities that must be fulfilled are: (1) identity of the suspect, (2) there is a reason for detention, and (3) place of detention, except in the case of being caught red-handed.

d. Period of Detention

1. In case of being caught red-handed by the closest investigator within 2x24 hours, the suspect must immediately report it to Superiors who have the right to punish.
2. For the purpose of investigation, a superior who has the right to punish by means of a decree is authorized to detain a suspect for a maximum of 20 (twenty) days (Art.78 Par.(1).
3. The grace period as referred to above, if necessary for the purpose of examination, may be extended by the authorized case submitting officer with a decision for every 30 (thirty) days and a maximum of 180 (one hundred and eighty) days. The provisions referred to do not preclude the possibility of the suspect being released from detention before the end of the detention period, if the interests of the examination have been fulfilled. After 200 (two hundred) days, the suspect must have been released from detention for the sake of law.
4. After a case is transferred to a military court, in the stage of examination in court, an examiner at the Military Court/High Military Court.
5. Detention and release carried out by Superiors who have the right to punish must be reported to the Submitting Officers with copies to Military Police Corps and the Military Prosecutors. In the event that Submitting Officers in charge of Superiors who have the right to punish who carried out a detention did not agree to the actions of his subordinates' Superiors who have the right to punish, he could issue a warrant to withdraw the detention after hearing the opinion of the Military Prosecutors.

e. Summons of Suspects/Witnesses

For suspects and witnesses who are outside custody, for the purpose of examination/investigators, summons can be made through their respective Superiors who have the right to punish. According to

Adji (1966), superiors who have the right to punish after receiving a summons to his subordinates, immediately notifies the subordinate who is summoned, then Superiors who have the right to punish orders the subordinates concerned to appear before the investigator, unless there are important reasons for postponing it, which matters must be immediately notified to the official who issued the summons/witnesses who are not members of the military, shall be carried out according to applicable regulations.

f. Search and confiscation

1. Search

Salam (1996) mentioned that the right to live in a place of residence/the right to reside is a human right that cannot be contested, to enter a compound of someone's house against the will of the occupant, is only allowed if the requirements stipulated by law are met as regulated in the following article: "Art 82 mentions that for the purpose of investigation, the investigator may carry out a house search, clothing search, or body search".

2. Foreclosure

Property rights are inviolable human rights, but there are times when for the purpose of solving a case it is necessary to confiscate one's belongings. Art 87 mentions that: (1) for the purpose of investigation, investigators can carry out confiscation, and (2) the confiscation as intended in Par.(1) shall be carried out by means of a warrant.

3. Mail Check

Examination of letters is regulated in the following articles, namely:

Art 96 mentions that: (1) investigators have the right to open, examine and confiscate other documents sent through the post office and telecommunication, service or communication company for the service or transportation if the object is suspected of

having a strong connection with the criminal case being examined, (2) for this purpose the Investigator may request the Head of the Post and Telecommunications Office, the head of the service or other communication or transportation company to submit to him the letter intended for that purpose, a receipt must be given, and (3) the matters referred to in Par.(1) and Par.(2) can be carried out at all levels of examination in the judicial process according to the provisions above in that paragraph.

4. Submission of Cases in Military Court

In military justice, the term handover officer is known, namely an officer who by or the basis of law No.31 of 1997 has the authority to determine Indonesia National Armed Forces who is under his command to be handed over to or resolved outside the court in a military court or court in general court environment (Art.1 Point 10). The case submitting officer (Art.122 Par.(1) consists of:

1. Commander of the Indonesian National Army/Indonesian National Armed Forces
2. Chief of staff:
 - a. Indonesian National Army
 - b. Indonesian National Navy
 - c. Indonesian National Air Force
 - d. Chief of Police of the Republic of Indonesia

Case Handover Officer (Par.2) may appoint a commander/head of each subordinate unit, at the lowest level with the Resort Military Command to act as a Case Transfer Officer.

The case handing officer (Art.123 Par.1) has the authority to:

1. instructing investigators to carry out investigations;
2. receiving reports on the implementation of investigations;
3. ordering coercive measures (exposing someone against his will before the investigator);
4. extending detention (Art.78);

5. receiving or requesting a legal opinion from the prosecutor regarding the settlement of a case;
 6. submitting the case to a court authorized to examine and judge (ordering the prosecutor to prosecute the case before the court);
 7. determining cases to be resolved according to the soldier's discipline law; and
 8. closing cases for legal purposes or for public/military interests.
2. Several criminal acts are related to one another, for example if the criminal act is committed by more than one person;
 - a. who cooperate and be done at the same time;
 - b. at a different time and place, but it is the performance of their previous evil conspiracy;
 - c. by one or more people with the intention of obtaining equipment that will be used to commit other criminal acts;
 3. Several criminal acts which are not related to one another, but with one another have a relationship, in this case the combination is necessary for the purpose of examination.

5. Research Files

After completing the investigation, the investigator submits the case file to the Prosecutor. After receiving the file, the Prosecutor studies and examines the results of the investigation, whether it is complete or not. If the formal requirements are incomplete (Art.124), the Prosecutor asks the investigator to immediately complete it. The request is submitted in writing or orally. Or if the results of the investigation are not sufficient, then the prosecutor will carry out additional investigations to complement it, or it can also return the case file to the investigator along with instructions on the things that must be completed. The investigator is obliged to immediately carry out additional investigations in accordance with the instructions of the Prosecutor and to return the case file to the Prosecutor (Art.125 Par.(1), namely that: (1) the case is submitted to the court, or (2) resolved according to the Soldier Discipline Law, or (3) closed for the sake of legal, general or military.

6. Merger of Cases

In the event that the Prosecutor at the same time or drops by at the same time receives the case files, then he may merge the case (Art.128) this can be done in the following cases:

1. Several criminal acts committed by the same person and for the purpose of examination are not an obstacle to the merger;

7. Splitsing

In one case, several people are involved as perpetrators or assisting in carrying out, and they can be filed in several case files (splitsing). So here in one case involving several suspects, then the case can be split into several files. For this reason, the perpetrators are not submitted to court in one case file. According to Art.129 of Law No.31 of 1997, in the event that the prosecutor accepts several criminal acts committed by several suspects, the prosecutor can prosecute the defendant separately. Case solving (splitsing) commonly done to overcome the shortage of witnesses in one case.

8. Indictment

Prosecution in military criminal cases is carried out by case submitting officers by submitting the criminal case to a court within the domain of military justice or a court within the competent public justice system, by demanding that it be examined and tried in matters and according to the manner stipulated in Law No.31 of 1997. Attacking a case by a case submitting officer (Art.130) is carried out by the Prosecutor by submitting the case file to the competent court accompanied by an indictment letter.

3.4 CASE

In the decision of the I-02 Medan Military Court, the Decision of the Medan I-02 Military Court based on Decision No.235-K/PM I-02/AD/XI/2016 is as follows:

1. Declaring the Defendant on behalf of Surono, Sergeant Mayor NRP 3910007260369, was legally and convincingly proven guilty of committing a crime: "Committing acts of physical violence within the scope of the household that do not cause disease or obstruction to carry out occupations or livelihoods or daily activities".
2. Convicting the defendant by:
Criminal: Imprisonment for 4 (four) months with a probation period of 6 (six) months, provided that the criminal order does not have to be served, unless later a judge's decision determines otherwise because the convict has committed a criminal act or disciplinary offense prior to the above probation period run out.
3. Determining evidence in the form of letters:
 - a. Four sheets of Visum et Repertum No.1241/DIR-RIM/K/IX/2013 dated September 6, 2013 on behalf of Indra Ningsih;
 - b. One sheet of Wife Guidance Card Reg. Number: 521/V/2010 dated 18 June 2010;
 - c. One copy of Marriage book from KUA Number: 48/48/VIII/1993 dated 27 August 1993;
 - d. One copy of Family Card No. 020111/08/00772;
 - e. One photo of Indra Ningsih after being persecuted;
 - f. Charging the court fee to the Defendant in this case of Rp.10,000, - (ten thousand rupiah).

3.4.1 Case Analysis

In the case of criminal acts of domestic violence committed by Sergeant Mayor, it has gone through a military court process and has been decided based on the

applicable law so that the verdict has permanent legal force. The process is: "In order to declare a person to have committed a criminal act, the actions of that person as revealed in the facts of court law must be able to fulfill all the elements of the criminal act which he is accused of". In accordance with the evidence system regulated in the Criminal Procedure Code contained in Art.183, the formula is as follows: "A judge may not impose a sentence on a person unless at least two pieces of evidence are valid, he or she has the belief that a criminal act actually occurred and that the accused was guilty of committing it".

The basis for the judges' legal considerations in determining the verdict in the Sergeant Mayor Surono case is the fulfillment of the elements in Art.44 Par.(1) in conjunction with Par.(4) of Law of the Republic of Indonesia No.23 of 2004, Art.14 letter a of Republic of Indonesia Law No.23 of 2004, Art.190 Par.(1) of Law of the Republic of Indonesia No.31 of 1997 concerning Military Courts, namely: Art.44 Par.(1) of Law of the Republic of Indonesia No.23 of 2004, "Everyone who commits acts of physical violence within the scope of the household as referred to in Art.5 letter a shall be sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp.15,000,000.00 (fifteen million rupiah). Jo. Art.44 Par.(4) The Law of the Republic of Indonesia No.23 of 2004, stated that committed by the husband against the wife or vice versa who does not cause illness or obstruction from carrying out work or livelihood or daily activities, shall be punished with imprisonment of up to 4 (four) months or a maximum fine of Rp. 5,000,000.00 (five million rupiah).

In this case the elements are fulfilled:

- a. The element of "committing physical violence"

This element has been fulfilled from the testimony of the victim which is corroborated by the testimony of the witnesses witnesses, on the confession of the suspect Surono and the results of the

post mortem et repertum, it can be concluded that the suspect Surono has committed physical violence/abuse on the victim so that the victim feels pain as stated in Art.6 of Law No.23 of 2004.

b. The element “within the scope of the household”

This element has been fulfilled where the relationship between the victim and the suspect is husband and wife, in accordance with Art.2 Par.(1) Point b of Law No.23 of 2004.

The household scope is in accordance with Art.2 Par.(1) Point b of Law No.23 of 2004, are:

1. husband, wife and children (including adopted and step children);
2. people who have family relations with the person referred to in No.1 because of blood relations, marriage, breastfeeding, care and guardianship, who live in the household (parents-in-law, son-in-law, brother-in-law, and in-laws); and
3. people who work to help the household and live in the household (domestic worker).

One form of domestic violence in accordance with the provisions of Art.5 of Law No.23 of 2004. Physical violence is an act that causes pain, falls ill or is seriously injured (Art.6). Based on the testimony of the victim’s witness, another witness, the defendant himself, has fulfilled the element of committing physical violence, namely beating the victim witness so that it causes pain (evidenced by visum et repertum). The accused as the perpetrator of violence in this case is the legal husband of the victim’s witness.

CONCLUSION

1. Settlement of criminal cases of domestic violence committed by members of the Indonesian National Armed Forces within the Military Court I-02 Medan, can be conducted in 2 (two) ways:
 - a. Settlement of cases of domestic violence committed by members of the Indonesia National Armed Forces has been carried

out in accordance with applicable legal provisions, namely military criminal procedural law as stipulated in Law of the Republic of Indonesia No.31 of 1997 concerning Military Courts, namely: report, examination Stage, and case processing stage.

- b. Cases of criminal acts of domestic violence committed by members of the Indonesian National Armed Forces, which in the Law of the Republic of Indonesia No.23 of 2004 concerning domestic violence are determined in the complaint offense, if during the investigation process the case is revoked by the injured party/complainant, then the settlement, the case is returned to the Unit Commander as the Supervisor who Has the rights to punish accompanied by the handing over of the suspect for personnel training so that in the future they can foster their household properly.
2. Factors that cause members of the Indonesian National Armyed Forces to commit domestic violence, external and internal factors as well. External factors, including patriarchal culture that places men as superior to women, religious interpretation, factors that men and women are not positioned equally in society, society does not regard domestic violence as a social problem, misunderstanding against religious teachings which assume that men can control women. Internal factors, including the labelization of women with weak physical conditions tends to be considered the object of the perpetrators of violence. The capitalist economic system is also the cause of violence against women. There is no institution that provides direct services (crisis center) that provides psychological and legal assistance for victims of domestic violence, there is trauma in the soul of a soldier who has just finished carrying out his service in the field/war.
3. The authority of the Military I-02 Medan Prosecutor in handling cases of

domestic violence is regulated in Art.71 of the Military Court Law No.27 of 1997, they are: receiving a report or complaint, taking the first action at the time and place of the incident, seeking information and evidence, telling someone to stop, making a forced effort (arrest, search, detention, confiscation, and examination of documents), taking fingerprints and photographing someone, calling someone to be heard as a suspect or witness, asking for help expert, carrying out other actions, carrying out orders that are punitive boss to detain the suspect, and reporting the results of the implementation of the investigation to the supervisor who has the rights to punish.

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