

## A Legal Process in Cases of Domestic Violence Committed by TNI Personnel

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**Abstract.** The state considers that all forms of violence, especially domestic violence, constitute violations of human rights and crimes against human dignity. The objective of this study was to demonstrate that the integrity and harmony of a household can be disrupted if the quality and self-control cannot be maintained, ultimately leading to domestic violence and causing a sense of insecurity or injustice to those within the household. This qualitative research used a descriptive approach to systematically gather data that were factual and rapid in line with the condition when this study was conducted. The results showed that every individual within a household, in carrying out their rights and responsibilities, must be guided by religion. Such principles need to be nurtured and developed to build the integrity of a household.

**Keywords:** Domestic Violence, Military Law, TNI Personnel.

### INTRODUCTION

Domestic violence, once regarded as an internal family matter considering the consequences it brings, has been criminalized by the law, becoming a highly serious form of crime. It is not just a crime against the victim's person but has been included in the legal framework as a form of crime/violation of human rights.

### METHODS

This study was legal research that employs various approaches to address the researched issues, including (1) the statutory approach, (2) the conceptual approach, (3) the comparative approach, and (4) historical and philosophical approaches. Data processing was conducted qualitatively. Written legal materials that had been gathered were then systematically organized following the issues being researched. Furthermore, these legal materials were examined and elucidated based on relevant theoretical foundations. To address the issues, an evaluation of the systematically organized legal materials was conducted to provide precise interpretations and legal implications.

## **RESULTS AND DISCUSSION**

Marriage is the spiritual and physical bond between a man and a woman as husband and wife to form a happy and lasting family (household) based on belief in the Almighty God. Therefore, the integrity and harmony of a happy, safe, peaceful household are the desires of every individual in a family. The Republic of Indonesia is a nation founded on belief in the Almighty God, which is guaranteed by Article 29 of the 1945 Indonesian Constitution. Consequently, every individual within a household, in carrying out their rights and responsibilities, must be guided by religion. Such principles need to be nurtured and developed to build the integrity of a household. The integrity and harmony of a household can be disrupted if the quality and self-control cannot be maintained, ultimately leading to domestic violence and causing a sense of insecurity or injustice to those within the household, including as follows:

- a. Husband, wife, and children,
- b. Individuals who have a familial relationship with those mentioned in point (a) due to blood ties, marriage, adoption, foster care, and guardianship that are established within the household, and/or
- c. Individuals who work to assist the household and reside within the household.

According to Article 1, Paragraph 1 of Indonesia's Law No. 23/2004 concerning the Elimination of Domestic Violence, domestic violence is defined as "any act against an individual, especially a woman, resulting in physical, sexual, psychological, and/or household neglect, including threats to commit acts, coercion, or unlawful deprivation of freedom within the household." To prevent, protect victims, and take action against perpetrators of domestic violence, the state and society are obliged to carry out prevention, protection, and legal actions against the perpetrators following the philosophy of Pancasila and the 1945 Indonesian Constitution. The state considers that all forms of violence, especially domestic violence, constitute violations of human rights and crimes against human dignity, as well as a form of discrimination. This view is based on Article 28G, Paragraph 1 of the 1945 Indonesian Constitution, which states that "Everyone has the right to the protection of their selves, family, honor, dignity, and property under their control, as well as the right to feel safe and be protected from threats of fear to do or not do something that is a human right." Article 28H, Paragraph 2 also states "Everyone has the right to receive facilities and special treatment to obtain equal opportunities and benefits to achieve equality and justice."

Domestic violence, once considered an internal family matter based on its consequences, has been criminalized by law as a very serious offense. It is not only a crime against the victim but is also recognized as a crime and a violation of human rights within the context of domestic life. Considering the seriousness of this crime, domestic violence, which initially referred to the Indonesian Criminal Code (Indonesian: *Kitab Undang-Undang Hukum Pidana* [KUHP]), has subsequently been regulated by law as a *lex specialis* under Indonesia's Law No. 23/2004 concerning the Elimination of Domestic Violence.

### **Neglect of Family and Jurisdiction for Case Resolution for TNI Personnel**

One form of criminal offense, as regulated in Indonesia's Law No. 23/2004 Concerning the Elimination of Domestic Violence, is often committed by TNI (Indonesian National Armed Forces) personnel and involves neglect within the household, as stipulated in Article 9, Paragraph 1 of Indonesia's Law No. 23/2004 concerning the Elimination of Domestic Violence. This article states that "Every person is prohibited from neglecting individuals within the household. According to applicable law or due to an agreement or obligation, they are required to provide support, care, or maintenance to those individuals." The punishment for neglect is less severe compared to violence or abuse within the household. Neglect, as referred to in Paragraph 1, also applies to anyone who causes economic dependency by restricting and/or prohibiting suitable work both inside and outside the home, thereby placing the victim under their control. Under this law, the criminal penalty for neglect within the household, as defined in Article 49, is a maximum prison sentence of 3 (three) years or a fine of up to 15,000,000.00 IDR (fifteen million Indonesian Rupiah). This penalty applies to anyone who:

- a. Neglects another person within their household as stipulated in Article 9, Paragraph 1, and
- b. Neglects another person as stipulated in Article 9, Paragraph 2.

Military personnel, like other citizens, have equal legal standing. This statement is affirmed in Article 27, Paragraph 1 of the 1945 Indonesian Constitution as amended, which states "All citizens have equal standing before the law...." Therefore, just like other citizens, crimes committed by military personnel, including domestic violence crimes, must be addressed and resolved according to the applicable laws.

The judiciary, as an independent state authority responsible for administering justice based on the principles of Pancasila, plays a crucial role in upholding the rule of law in the Republic of Indonesia. This responsibility is carried out by the Supreme Court and its subordinate judicial bodies, which encompass the General Judiciary, Religious Judiciary, Military Judiciary, Administrative Judiciary, as well as the Constitutional Court. The Military

Judiciary, situated under the Supreme Court's jurisdiction, derives its existence from Indonesia's Law No. 31/1997 concerning the Military Judiciary. This institution holds the authority to adjudicate criminal acts committed by military personnel and address disputes related to military administration.

The term "military" has its roots in the Greek word "*miles*," signifying armed individuals who are prepared for combat or warfare, primarily for the defense of the nation. Given the inherently rigorous nature of military life and the necessity for high discipline, it is not uncommon for military environments to lead to boredom and the development of high temperaments and emotions, sometimes resulting in behavior that is perceived as rough. In addition, members of the military are trained and proficient in using weapons, as the fundamental doctrine of warfare is centered around the notion of either killing or being killed. Due to these unique characteristics, military personnel, including TNI (Indonesian National Armed Forces) soldiers, who engage in criminal activities are subject to prosecution in the Military Judiciary. Importantly, they are also bound by general criminal law.

Article 1 of the Indonesian Military Criminal Code (Indonesian: *Undang Undang Hukum Pidana Militer* [KUHPM]) stipulates "For the application of this Code, the provisions of general criminal law, including Chapter IX of the first book of the Indonesian Criminal Code, shall apply unless deviations are specified by law." Furthermore, Article 2 of this Code states "Criminal acts not listed in this Code, committed by individuals subject to the authority of military judicial bodies, shall be subject to general criminal law unless deviations are specified by law." From these two articles, it is evident that military personnel, or TNI soldiers, are held accountable under both the Indonesian Military Criminal Code (KUHPM) and Indonesian Criminal Code (KUHP), in addition to various other laws beyond the Indonesian Criminal Code. Therefore, all criminal allegations against military personnel, whether covered by the Indonesian Military Criminal Code, the Indonesian Criminal Code, or other relevant legislation, are subject to legal proceedings through the Military Judiciary.

Indonesia's Law No. 31/1997 regarding the Military Judiciary governs the jurisdiction of the Military Judiciary, dividing it into two categories. It has the authority to adjudicate criminal acts committed by individuals who, at the time of the offense, fall into the following statuses:

- a. Soldiers,
- b. Those equated with soldiers based on the law,
- c. Members of a group, position, organization, or those equated or deemed as soldiers according to the law, and

- d. Individuals not classified as soldiers, or those equated with soldiers, or members of a group/position/organization equated or deemed as soldiers, but, upon the decision of the Commander-in-Chief of the Indonesian National Armed Forces with the approval of the Minister of Justice, must be tried by a court within the Military Judiciary.

For instance, civilians who, in reality, work for the Indonesian National Armed Forces (military) and are entrusted with military secrets may be subject to legal proceedings if they commit offenses related to their duties. The Military Judiciary is also authorized to examine, adjudicate, and settle military administrative disputes. This authority is vested in the High Military Court as the First Instance Court and the Main Military Court as the Appellate Court. This jurisdiction is referred to as absolute competence. The relative competence of the Military Judiciary involves the jurisdiction of similar courts to examine a specific case. According to Article 10 of Indonesia's Law No. 31/1997 concerning the Military Judiciary, "Military Judiciary within its jurisdiction shall adjudicate criminal acts that occur within its territorial jurisdiction (*Locus delicti*) or if the accused is part of a unit within its territorial jurisdiction." Furthermore, if there are multiple courts with equal jurisdiction over a case, the court that first receives the case shall be responsible for adjudicating it (Article 11 of Indonesia's Law No. 31/1997 concerning Military Judiciary).

### **The Military Criminal Process**

Similar to general criminal law, the process of resolving military criminal cases is divided into several stages, including investigation, prosecution, trial in the Military Court, and concluding with the execution process. These stages are also related to the division of tasks and functions of various institutions and law enforcement units within the TNI (Indonesian National Armed Forces) whose authority is regulated as follows:

- a. The unit commanders, serving as the authorized superiors who have the right to impose penalties (Indonesian: *Atasan Yang Berhak Menghukum* [ANKUM]) and/or the case-handing officer (Indonesian: *Perwira Penyerah Perkara* [PAPER]),
- b. The Military Police officers, serving as the investigators,
- c. The military prosecutors, serving as the investigators, public prosecutors, and executors, and
- d. Military judges in the Military Court who adjudicate, examine, and decide on criminal cases involving TNI personnel or those equated with TNI personnel according to the law.

The stages of the case resolution process start with the investigation stage, conducted by the Military Police officers based on a police report. This is followed by the prosecution stage, which commences after the case files are transferred from the Military Police investigators and upon obtaining the Case Handover Decision from the case-handing officer. Lastly, there is the trial stage, conducted by the Military Court, each with its respective jurisdiction: the Military Court for first-level officers, non-commissioned officers, and enlisted personnel, and the High Military Court for middle-level officers.

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