

## Restorative Justice in Military Justice Practices in Domestic Violence Cases Committed By TNI Soldiers

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### ABSTRACT

Not only does the TNI community experience a high rate of domestic violence in Indonesia, but there have also been numerous instances of TNI soldiers engaging in violent domestic relationships. Nearly every TNI soldier who violates domestic abuse laws faces a prison sentence. In actuality, handling domestic abuse crimes can be better accomplished by using restorative justice as an alternative. In line with the goals of Law Number 23 of 2004 for the Elimination of Domestic Violence, this study will address the use of restorative justice to assist attempts to return the situation to its pre-violent state. This study's empirical juridical methodology is bolstered by a case approach derived from the Military Court II 08 Jakarta's ruling. The study's findings show that, from 2016 to 2022, TNI members who commit domestic abuse have never received additional therapy from Military Court II 08 Jakarta. Furthermore, the Panel of Judges has utilized the principle of Restorative Justice in multiple instances of domestic violence committed by TNI soldiers based on legal considerations. It should be noted, however, that there are no guidelines or regulations governing the implementation of Restorative Justice in the military justice system. Thus, in order for Military Court Judges to use Restorative Justice in the Military Court System, it is imperative that SEMA and internal TNI provisions be issued.

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### INTRODUCTION

Domestic violence is a form of crime that violates the human rights of victims, such as the right to life, the right to freedom and security, the right not to be tortured or persecuted, and the right not to experience discrimination. Domestic violence is a serious violation of human rights and should be treated as a serious crime. [1] As a form of crime against human rights, the state has a responsibility to protect its citizens from domestic violence. The state must implement effective policies, laws, and law enforcement mechanisms to prevent, investigate, and punish perpetrators of domestic violence.

The integrity and harmony of the household can be disturbed if the quality and self-control cannot be controlled, which in the end can lead to domestic violence so that there will be a sense of insecurity or injustice towards the people in the scope of the household, which includes:[2] Husband, wife and children and pPeople who have a family relationship with such persons as referred to in letter a due to blood relations, marriage, lactation, nurturing and guardianship who reside in the household and/or People who work help the household and settle in the household.

Given how serious the impact of domestic violence is, the crime of domestic violence which originally referred to in the Criminal Code (KUHP) subsequently by *lex specialis* law has been regulated in the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence.

Every member of the military or the National Army of Indonesia of high and low rank is obliged to uphold military honor and refrain from acts or remarks that may tarnish or damage the good name of the military. [3] However, in reality, there are often cases of domestic violence committed by TNI soldiers. Especially with the increasing prevalence of social media, domestic violence cases committed by TNI soldiers often become viral cases in the community. This is certainly very tarnished the dignity and dignity of the TNI, because TNI soldiers who can protect the community should actually commit domestic violence.

From a legal point of view, TNI soldiers have the same position as ordinary members of society. This means that as a citizen, however TNI Soldiers apply all the provisions of Indonesia's national law, both criminal law, civil law, criminal procedure and civil procedure, the difference is only because there are more special duties and obligations than ordinary citizens, especially in matters related to state defense. [4] Therefore, TNI members who commit criminal acts will be processed in accordance with the applicable law through a special court, namely the military court.

The application of military criminal law is separated into the Military Criminal Code (KUHPM) as material law and military criminal procedural law as regulated in Law Number 31 of 1997 concerning Military Justice as formal law.

The existence of military criminal law does not mean that general criminal law does not apply to the military, but for the military it also applies to both general criminal law and military criminal law. Basically, military criminal law is a legal provision that regulates a military officer about which actions are violations or crimes or are prohibitions or musts and are given the threat of criminal sanctions for violations. Military criminal law is not a law that regulates norms, but only regulates violations or crimes committed by TNI soldiers or which according to the provisions of the Law are equated with TNI soldiers.

The existence of provisions in the Criminal Code that regulates additional crimes in the form of dismissal from military service is often a strong reason for not reporting domestic violence. Concern over the damage to the career of the husband who is a TNI soldier is a consideration for victims of domestic violence to bring the case to the law, especially if the husband is the backbone of the family. In addition, many cases of domestic violence in the military environment do not reach the general court because there is still a strong military legal power such as the power of superiors who have the right to punish (*ankum*) to decide a criminal issue of TNI soldiers, where TNI soldiers who violate military discipline laws will be subject to disciplinary sanctions[5].

Even though they have been sentenced to prison, domestic violence by the perpetrator will have the potential to recur and cause trauma to the victim and will result in the end of their marital relationship with divorce. Punishment alone often does not result in the balance of power in the relationship between the victim and the perpetrator, the punishment approach often does not touch the behavioral aspects as well as the value system and norms in the family, so that even though the perpetrator has been convicted, there is still the potential to become a perpetrator of violence again and also an additional penalty in the form of counseling for the perpetrator as stipulated in Article 50 letter b of the PKDRT Law. One of the additional forms of criminal punishment in domestic violence cases is in the form of counseling imposed by the Judge. Counseling is as the provision of assistance by someone who is an expert or a trained person in such a way that one's understanding and psychological ability can increase in solving the problems faced. [6]

Additional criminal optimization in the form of mandatory criminal sanctions, mediation counseling through counseling institutions is one of the efforts to protect and prevent acts of domestic violence from happening so that a happy and eternal family (household) can be formed based on the integrity of the Almighty. [7] However, in its application, often additional penalties for mandatory mediation counseling are rarely given by the Panel of Judges in deciding domestic violence cases. The Panel of Judges tends to only give prison sentences, even though the additional amendment to mandatory counseling is very important to improve the relationship between the perpetrator and the victim so that it can provide protection for the victim from the recurrence of domestic violence.

There have been many soldiers who have committed domestic violence and have been tried in military courts, the fact can be seen in several Military Court decisions, including case data, especially cases in the jurisdiction of the Military Court III Jakarta. Based on the data mentioned above, almost all domestic violence case decisions in the verdict contain the imposition of prison criminal sanctions. In fact, prison is not the best solution in solving crime problems, especially crimes where the damage caused to victims and society can still be restored so that the damaged conditions can be returned to their original state, as well as the elimination of the bad impact of prisons.

The criminal justice sub-system in Indonesia has currently issued regulations and decisions regarding the application of the concept of restorative justice. These have been issued by the Police during the investigation stage, the Prosecutor's Office during the prosecution stage, and the Supreme Court during the judicial level. However, there are disparities and inequalities in the implementation of these regulations and decisions. There are currently no regulations or references governing the application of restorative justice in the military justice system. Therefore, this study will investigate and write about whether restorative justice can be used in the military judicial system to settle domestic violence crimes committed by TNI Soldiers,

even if there are no guidelines or references for this.

Based on the description above, in this study, the author will conduct research with the title “Restorative Justice In Military Justice Practices In Domestic Violence Cases Committed By Tni Soldiers”

## METHODOLOGY

This research falls under the category of empirical juridical research due to its nature. Legal research on the direct application or implementation of normative legal requirements on each unique legal event that takes place in society is known as empirical juridical research. [8] In this study, the application of restorative justice in addressing domestic violence in the military court setting of Dilmil III Jakarta was investigated using empirical juridical research.

This kind of research is a descriptive legal study that presents information on the use of restorative justice in the Dilmil II Jakarta military court setting to address domestic abuse. The purpose of this descriptive-analytical study is to describe, gather legal data, and examine restorative justice arrangements in relation to domestic abuse in a thorough and methodical manner.

## RESULTS

### Judge's Consideration Of Additional Crimes In The Form Of Counseling In Handling Domestic Violence In The Military Court Environment

Law Number 48 of 2009 about Judicial Power, which states that judicial power is the ability of an independent state to hold the judiciary to respect law and justice, fully guarantees the principle of judicial independence in Indonesia. The freedom of judges to formulate legal arguments, or legal reasoning, is a fundamental component of the judges' freedom principle. Judges use this ability to decide cases they are adjudicating.

There are three contextual essences of judges' freedom in exercising judicial power, namely:[9]

1. Judges are only accountable to the law and justice

2. The judge's decision cannot be influenced or directed by anybody, not even the government.

3. The judge's personality is unaffected in any way while performing his judicial duties and responsibilities.

Sudikno Mertokusumo defines a judge's decision as a statement that the judge as a state official authorized to do so is spoken at the trial and aims to end or settle a case. [10] In principle, the Judge only accepts every case submitted to him to be resolved and this means that there has been a criminal event or occurrence of a criminal act that has arisen, then the criminal event is presented to the Judge to determine the applicable law for that criminal event.

Criminal cases filed by the parties must first be constituted by the judge. The judge in his constatering does not just make shallow or rash conjectures or conclusions but must use means or tools to ascertain about the event in question. [11] A judge's decision, which is a conclusion of all events and facts obtained by the judge in the examination of the case, is assessed based on legal norms relevant to the facts. Furthermore, it is linked to the values of justice, so that the judge's decision will be nuanced and provide legal and justice values, as well as at the same time provide certainty in the settlement of a case.

The court has a lot of factors to weigh while reaching a judgment, including the facts of the case under investigation, the seriousness of the offender's actions and mistakes, the victim's and his family's interests, and the sense of justice in the community. The Judicial Power Law states that a judge's consideration is defined as the judge's ideas or opinions while rendering a decision by taking into account factors that may lessen or burden the offender. Every judge must provide a written analysis or opinion on the issue under review, which is a crucial component of the ruling.

According to Law Number 31 of 1997 Article 5, the Military Court is the exercise of judicial power within the armed forces, to uphold law and justice by paying attention to the interests of the implementation of state defense. Therefore, Judges in Military courts will have different considerations from Judges in general courts. In military courts, in addition to considering the balance between legal interests and public interests, the Panel of Judges must also consider military interests. Maintaining legal interests in the sense of maintaining the upholding of law and justice in society. Safeguarding the public interest in the sense of protecting the community, its dignity and dignity as human beings from arbitrary actions. Safeguarding military interests in the sense of keeping military interests from being harmed and at the same time encouraging soldiers to continue to comply with and uphold the applicable legal provisions even in difficult circumstances.

Law enforcement officials within the TNI must not only look at their legal interests, military interests must also be really considered. Military judges who will decide cases not only look at the problem from the perspective of the law, military judges must also always consider the interests of the military in their decisions. This is where one of the specificities of military law lies with various special regulations, which is solely carried out to maintain the upholding of the principle of military interests in law enforcement as mandated by the TNI Law, in this case the TNI Commander has a strategic interest to fight for the principle

of military interests in the judicial process so that the interests of law enforcement run in balance and in harmony with the interests of state defense.

Every member of the Indonesia National Army who has been proven to have committed domestic violence will be processed in accordance with the provisions of the applicable rules, both from the initial stage to the final stage, which in this case will find at a certain point the justice that the victim will obtain for the actions taken by the perpetrator against him that can harm him both physically and non-physically.

Law Number 25 of 2014 governs Military Discipline Law. Military Discipline is defined as awareness, conformity, and obedience to official regulations, laws, and life standards that are relevant to the military. The prevalence of spousal abuse incidents involving TNI members that have garnered significant public attention at this moment make the Military Discipline Law imperative. The Military Discipline Law has been broken in several incidences of domestic abuse, harming Indonesia's military institutions.

In general, every soldier who commits a violation of the law will be subject to sanctions as well. In the military realm, there are two things related to violations committed, both pure criminal offenses and impure offenses. A pure violation of the law is any act that is not a criminal act, but because it is contrary to official orders or something that is not in accordance with the order in the military. Meanwhile, a pure violation of the law is an act that is a criminal act so light in nature that it can be resolved by military discipline law.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in general, regulates the provisions pertaining to domestic violence. It regulates not only the prevention, protection, and recovery of victims of domestic violence, but also the specific regulation of violence that takes place in the home and includes elements of criminal acts that differ from the criminal acts of persecution regulated in the Criminal Code. Penalties for those who commit offenses related to domestic abuse include jail time, fines, and other crimes, as outlined in Law Number 23 of 2004 about the Elimination of Domestic abuse.

Prison sentences for domestic violence perpetrators are still considered ineffective because there is a potential for perpetrators to repeat and traumatize the victim and will result in the end of their marital relationship with divorce. Criminalization alone often does not result in a balance of power in the relationship between the victim and the perpetrator. In other words, the punitive approach often does not touch the behavioral aspects or the value system and norms in the family, so that even though the perpetrator has been convicted, he still has the potential to become a perpetrator of violence again.

Given that the imposition of a prison sentence is still possible for domestic violence perpetrators to repeat their actions, the optimization of additional crimes in the form of mandatory criminal sanctions, mediation counseling through counseling institutions is one of the efforts to protect and prevent domestic violence from happening again. The legal basis for the additional crime of counseling is regulated in Chapter VIII of the Criminal Provisions, Article 50 letters a and b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence also explicitly explains the purpose of carrying out additional counseling crimes as contained in Article 50 letter b which reads:

"a. prevent all forms of domestic violence; b. Protecting victims of domestic violence; c. cracking down on perpetrators of domestic violence; d. maintaining the integrity of a harmonious and prosperous household".

Based on data in the field related to domestic violence crimes that have been handled by the Jakarta Military Court II, several decisions with the following sanctions are known:

**Table 1.** Criminal Sanctions Imposed by the Judge at the Military Court II 08 Jakarta for Domestic Violence Cases

No	Verdict	Penalty
1.	13-K/PM II-08/AD/I/2016	Sentenced to 8 months in prison
2.	10-K/PM II-08/AL/I/2016	Sentenced to 4 months in prison
3.	95-K/PM II-08/AD/IV/2016	Sentenced to 6 months in prison
4.	26-K/PM II-08/AD/I/2016	Sentenced to 8 months in prison
5.	65-K/PM II-08/AD/II/2017	Imprisonment for 1 (one) year and dismissal from military service
6.	191-K/PM.II-08/AD/VIII/2017	Sentenced to 4 months in prison
7.	129-K/PM.II-08/AD/VI/2017	Sentenced to 3 months in prison
8.	222-K/PM.II-08/AL/IX/2019	Sentenced to 4 months in prison

Based on the results of an interview with Lt. Col. Chk Idolohi, S.H., the dominant reason for the judge to impose a prison sentence for the crime of domestic violence committed by members of the TNI is because the judges still consider that prison sentences can still be used as an adequate means for countering domestic violence crimes. The judge also considered that in general, prison sentences are imposed because they are reliable in tackling crime in Indonesia. The imposition of a prison sentence on the perpetrator of domestic

violence is always accompanied by consideration of aggravating and mitigating factors for the convict to determine the length of the prison sentence (strafmaat).

In addition, the choice of prison sentence in handling domestic violence crimes is also due to the unavailability of types of crimes that can be used as alternatives to prison sentences, so that judges finally still choose prison sentences to be imposed on perpetrators of domestic violence crimes. On the other hand, the Military Inspectorate has so far prosecuted many people with prison sentences, because the criminal law regulates and threatens these criminal acts with prison sentences.

Meanwhile, according to Lt. Col. Chk Idolohi, S.H. (Judge of the Military Court II 08 Jakarta) stated that the Judge is more dominant in making prison sentences that are often applied because the crime of domestic violence is different from child protection so that Diversion is not possible, in court it applies more punishment than treatment, treatment is difficult to carry out because there are conditions that must be met including mutual forgiveness between the two and the need for a statement and also domestic violence cases reported by the victim, The victim had experienced domestic violence long before she dared to report the act of domestic violence, so the domestic violence she experienced was an accumulation of feelings that had been held back so far [12]

In the decision on criminal sanctions for domestic violence in table 1, it tends to be a light prison, this is because the law is not used as a place for revenge but the law itself is to discipline and educate and the verdict issued by the judge also aims for sociological balance in society. Such as the purpose of punishment which is formulated with various criminal theories, namely finding and explaining the basis of the State's right to impose and carry out crimes. Apart from the purpose of the crime, after a discussion in the assembly, the judge argued that the interests of the victim really need to be considered, considering that the victim needs to be given protection and also reviewed from the aspect of benefit for the victim.

Regarding the absence of additional criminal verdicts on counseling given by the Military Council of Judge Dilmil II 08 Jakarta on perpetrators of domestic violence, Lieutenant Colonel Chk Hanifan Hidayatulloh, S.H., M.H. (Judge of the Military Court II 08 Jakarta) gave the reason why the judge has not implemented counseling because there are several considerations, first, the instrument is not clear, the second is not clear and the condition is not ready while there must be an institution (committee), Third, Law No. 23 of 2004 concerning the Elimination of Domestic Violence has never been fully implemented, fourth, victim protection has not been effective, fifth, socialization has not been implemented, sixth, the executive and legislature have not provided tools, and seventh, prosecutors have never prosecuted for additional crimes in the form of participating in counseling programs.

But even so, Lt. Col. Chk Hanifan Hidayatulloh, S.H., M.H. conveying the idea of prioritizing this counseling is quite good and must be implemented immediately, it's just that this counseling is an additional crime must be based on evidence, if the delicacy is proven if there is no justification then it will be problematic, the law is das sollent, there must be an agreement between the House of Representatives and the promoter and also the device must be improved. [13]

Meanwhile, according to Lt. Col. Chk (K) Prastiti Siswayani, S.H. Military Judge of the Military Court II 08 Jakarta The reason why the judge has not implemented counseling is the counseling rules that have not been explained in detail in Law No. 23 of 2004 concerning the Elimination of Domestic Violence so that law enforcement has not implemented the counseling and also the shortcomings are in the counseling institution itself, which is not clear which body is appointed and the cost is also not clear to whom it is charged. Even so, he agreed that the implementation of this counseling is applied to the crime of domestic violence because it has been regulated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence, but it must be seen from the case and also from the seriousness of the defendant not to repeat his act by committing domestic violence again, and it must be clarified which authorized institution has been directly appointed by what relevant agency, The cost is charged to whom, how long the counseling process takes, there needs to be clear guidelines[14].

In addition, socialization regarding the existence of institutions that can provide counseling services to perpetrators, in accordance with Article 50 letter b of Law No. 23 of 2004 concerning the Elimination of Domestic Violence has never existed from either the Central Government or the Regional Government. Judges have not received information about the institutions that provide services because there has been no socialization from the Government which institutions are ready and can be appointed as additional criminal implementers in the form of counseling. Until now, there are no procedures and mechanisms for supervision of the implementation of additional crimes, such as rehabilitation that is specifically supervised by law enforcement officials. Based on the existing facts, the institution that provides counseling services to perpetrators of violence has not been organized by the Military Court II 08 Jakarta. This situation is one of the obstacles for judges when applying additional crimes in the form of counseling to the perpetrators.

Regarding indications in imposing criminal sanctions, both imprisonment and action, if you look at the judge's decision, none of the judges ordered criminal action for the perpetrators. In fact, the purpose of punishment is not solely as retaliation for the defendants' actions to be a deterrent, but aims to foster and educate the defendants so that they are aware and aware of their mistakes, especially considering that TNI

members have an important role in safeguarding the nation's sovereignty. Because it is necessary to criminalize not only punishment but also efforts to educate criminals so that they do not repeat their actions in the future.

It is hoped that with the provision of sanctions in the form of additional criminal penalties to participate in counseling programs for TNI members who commit domestic violence crimes, the TNI members can improve their behavior and improve their households so that they can become better and become TNI members who can maintain the dignity and dignity of the unit and become an example for the community.

According to the Theory of Relative Criminality, which views that punishment is not as revenge for the perpetrator's mistakes, but as a means of achieving useful goals to protect the community towards the welfare of the community. The theory of relative criminality or the theory of purpose is based on the basis that crime is a tool to enforce order (law) in society. Criminal is a tool to prevent the occurrence of a crime, there are two types of prevention, namely general prevention and special prevention. General prevention is prevention with the aim of scaring the public so that people do not imitate acts similar to criminals. Special prevention is to prevent the perpetrator of a crime who has been convicted so that he does not repeat the crime, and to prevent the person who has bad intentions from realizing his intention in the form of real deeds. This goal can be achieved by imposing a criminal offense, which has three types, namely scaring them, correcting them, and making them helpless.

Based on the Theory of Relative Criminals, Article 50 letter b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence is one of the prevention efforts by providing guidance to perpetrators. The perpetrator is expected to be able to maintain the integrity of the household after serving an additional sentence of counseling and not repeat his actions.

From the data at the Military Court II 08 Jakarta and the results of interviews with military judges of the Military Court II 08 Jakarta, it can be concluded that the military judge's consideration of not implementing additional criminal punishment in the form of behavioral change counseling for TNI members who commit violent domestic violence crimes is because:

1. There has never been a demand/indictment from the Prosecutor using Article 50 letter b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence;
2. The judge does not know which institution is appointed to provide counseling services for perpetrators of violence at the Military Court II 08 Jakarta because according to the explanation of Article 50 letter b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is written that the institution has been accredited to provide counseling services for perpetrators, for example hospitals, clinics, counseling groups, or those who have expertise in providing counseling for perpetrators of domestic violence.
3. The financing problem is not yet clear to whom it will be charged.
4. There is no reference for the guidelines for the counseling program to be implemented.
5. It is not clear which institutions are appointed or cooperating as the implementers of the counseling program.
6. There has never been socialization to the courts or law enforcement officials.

### **Settlement Of Domestic Violence Victims With Restorative Justice In The Military Justice Environment**

There have been many soldiers who have committed domestic violence and have been tried in military courts. Based on data from the Military Court II 08 Jakarta, it is known that the number of domestic violence crimes during 2019-2022 is as follows:

**Table 2.** Domestic Violence Crimes of TNI Soldiers in the Jurisdiction of the Military Court II-08 Jakarta

No	Year	Number Of Article	Information
1.	2019	10	Permanent Legal Force
2.	2020	3	Permanent Legal Force
3.	2021	5	Permanent Legal Force
4.	2022	12	Permanent Legal Force

Source: Clerk of the Military Court II-08 Jakarta

Restorative justice is a sentencing paradigm that encourages offenders to make amends for the harm they have caused to victims, their families, and the community in response to crimes that are deemed preventable.

The main objectives of Restorative Justice as stated in Tony F. Marshall's book, are[15]:

1. To fully meet the material, financial, emotional, and social needs of the victim (including those who are personally close to the victim who may also be affected);
2. Prevent re-offending by reintegrating perpetrators into the community;

3. Allow violators to assume active responsibility for their actions;
4. Recreate a work community that supports the rehabilitation of perpetrators and victims and is active in preventing crime;
5. Provide means to avoid legal justice escalation and associated costs and delays.

Within the framework of restorative justice, the court is positioned as a mediator using the consensus model, a methodology that prioritizes communication between parties involved in conflict in order to resolve issues. Thus, the phrase Alternative Dispute Resolution (ADR) was created, and in some circumstances, it is thought to better satisfy the needs of efficiency and justice. [16] A model of discussion and compromise took the place of the model of resistance. Reconciliation and rehabilitation take the place of deterrence as the primary objective. The relationship between the perpetrators and the victims is discussed, and the community is seen as a facilitator in the restorative process. Stigma must be removed through restorative action and the possibility of repentance and forgiveness is always open as long as they help to improve the situation caused by their actions.

The fundamental idea of restorative justice is to restore victims of crime by paying them back, promoting peace, and holding offenders accountable through social work and other agreements. Fair legislation in the context of restorative justice is unquestionably neutral, unbiased, and based entirely on the truth in compliance with relevant rules and regulations. It also takes into account the equity of compensation rights and balance in all facets of life. In addition to the court's responsibility in upholding public order and the community's role in maintaining peace, offenders have the chance to be active in the situation's repair.

The goal of the Restorative Justice process is to hold violators accountable for the consequences of their actions, including recording and committing to repairs; the steps the victim agrees to participate in a process that can be carried out safely; their understanding that their actions have affected the victim and others; and, finally, to produce satisfaction. The process also aims to prevent violators by emphasizing flexible violations agreed upon by the parties, who emphasize repairing the damage done and preventing it as soon as possible; violators commit and attempt to address the factors that contribute to their behavior; and both victims and perpetrators commit the damage, commit the necessary repairs, and acknowledge the consequences of their actions; and reintegrating into society.

Another method of settling criminal cases that involves integrating the offender and the victim or the community is the concept of restorative justice. Victims have the ability to actively take part in the resolution of criminal cases. Penal mediation is one method that can be applied when using the restorative justice concept to handle criminal matters.

Penal mediation is also known by a number of other names, such as "mediation in criminal cases" or "mediation in penal matters." It is known as "straf be midelling" in the Netherlands, "De Aufsergerichtliche Tataus-gleich" (abbreviated ATA) in Germany, and "de mediation pénale" in French. Penal mediation is also known as "Victim Offender Mediation" (VOM), Tera-Offer-AuLeich (TOA), or Offender Victim Arrangement (VOA) since its main goal is to bring together the victim and the criminal. Penal mediation is an alternative prosecution strategy that offers the chance to settle agreements reached during discussions between the victim and the criminal. [17]

Although theoretically criminal cases can be resolved through penal mediation, it does not apply to all criminal cases. In this case, Mudzakir proposed a categorization of the scope of cases that can be resolved through penal mediation, namely:[18]

1. The violation of the criminal law is included in the category of complaint offenses, both absolute and relative.
2. The violation of the criminal law has a fine as a criminal threat and the violator has paid it (Article 80 of the Criminal Code);
3. Violations of criminal law include the category of "violations" not "crimes" that are only threatened with a fine;
4. Violations of criminal law include criminal acts in the field of administrative law that place criminal sanctions as the ultimate remedium;
5. Criminal law violations include the category of minor/all-round and law enforcement officials use their authority to exercise discretion.
6. Violations of criminal law that are usually stopped or not processed to court (deponir) by the Attorney General in accordance with the legal authority he has.
7. The violation of the criminal law is included in the category of customary criminal law violations that are resolved through customary institutions

As domestic abuse is one of the crimes in Indonesia that is governed by legislation No. 23 of 2004, a special criminal legislation, it can also be dealt with using the restorative justice model, which involves using penal mediation. All of the various forms of domestic violence—physical, psychological, sexual, and neglect of domestic persons—that are listed in Law No. 23 of 2004's Article 5 can be categorized as criminal acts of complaint (klacht delicten en niet).

A criminal act is only prosecuted, in accordance with Sudarto, in response to a complaint filed by the party who was harmed (gelaedeerdepartij). [19] Andi Hamzah continued by saying that a criminal complaint can only be prosecuted in the event that it is made by a victim who is entitled to file a complaint under the law, such as in the case of insults, complaints, and so forth[20].

Therefore, domestic abuse cases that fall within the criminal complaint category can only be brought to justice in the event that a complainant has the legal right to file a complaint. According to the Criminal Code, a complaint is defined as a notification to an authorized authority, together with a request from the interested party to pursue legal action against the offender for a criminal act that has caused him harm. The victim in this instance is the interested party as he has suffered harm as a result of the perpetrator's domestic abuse.

The Republic of Indonesia's National Police has taken a step toward resolving criminal acts by emphasizing restorative justice, which emphasizes restoration to the original state and the balance of protection and interests of victims and offenders of crimes that are not oriented towards crime as a legal necessity in the community. This regulation, Number 8 of 2021, governs the National Police's handling of crimes based on restorative justice. A novel approach to criminal law enforcement, the National Police Regulation on the Handling of Criminal Acts based on Restorative Justice takes into account social norms and values as a means of providing legal certainty, particularly with regard to the benefits and community sense of justice. This is done in order to address the evolving legal needs of the community and satisfy the sense of justice shared by all parties. It is a manifestation of the National Police's authority as per Articles 16 and 18 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia. In order to jointly seek a just solution through peace, restorative justice involves the offender, victim, offender's family, victim's family, community leaders, religious leaders, traditional leaders, or stakeholders. The focus is on re-election to the original state.

The Public Prosecutor is permitted to close the case for the purpose of the law, according to Article 3 paragraph (1) of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The Prosecutor's Office of the Republic of Indonesia established this regulation with the intention of promoting restoration to the original state as a fair settlement, rather than as a means of exacting revenge on those who have committed crimes.

The most recent of these was the Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice. The Supreme Court of the Republic of Indonesia has also released policies and guidelines on the application of restorative justice. In contrast, the determination of this decision aims to facilitate courts in the general judicial environment in comprehending and implementing the Supreme Court Regulations, Supreme Court Circulars, and Decisions of the Chief Justice. The enactment of this decision is intended to promote the optimization of the implementation of the Supreme Court Regulations, the Supreme Court Circular Letter, and the Chief Justice of the Supreme Court Decree that govern the implementation of Restorative Justice (Restorative Justice) in the courts. The Supreme Court, which oversees the administration of restorative justice (also known as "restorative justice"), promotes its increased use in order to uphold the ideals of swift, easy, affordable, and balanced justice. As a result, the Criminal Justice System already has regulations that serve as guidelines for applying the restorative justice idea.

In contrast to the general justice system, the military justice system The Military Justice system is a judicial system that is specifically used by the military in dealing with unlawful acts committed by military members. Currently, the law enforcement system within the scope of the Military Justice still uses horse glasses, so that the application of justice using the restorative justice system is still far from expectations, while in the current era by prioritizing the procedure for resolving cases outside the court with the intention and purpose so that legal problems arising from the occurrence of criminal acts can be resolved properly through the agreement and agreement between parties. A growing concept that involves victims in it is called restorative justice. [21]

The implementation of restorative justice in the current Dilmil environment is only based on the 2021 SEMA which is called the imposition of conditional sentences with special conditions (probationary crimes) which consists of general conditions and special conditions. (pardon of Judge Rechtelik Pardon/Judicial Pardon, see Article 54 of Law Number 1 of 2023 concerning the Criminal Code). The basis of SEMA is of course not enough because the military court as one of the sub-systems of the judicial structure is also functionally bound to the Military Inspectorate and the Military Police (the Inspector is more likely to appeal against conditional criminal decisions / VW), besides that the process of resolving criminal cases in the military court is unique because of the application of the doctrine of unity of command, namely the existence of the Security and Paperaan Institution which is the person in charge of unit development, including personnel development.

Although there are no rules in the Military Criminal Justice System, the principle of Restorative Justice has been included as one of the considerations by judges in their decisions. The form of application of the principle of restorative justice in the judicial environment II 08 Jkarta can be seen from the following two



decisions:

- First, in the decision Number 110-K/PM. II-08/AD/III/2022 dated April 13, 2022, on behalf of PP. For the crime committed by the defendant, the Military Inspectorate charged the defendant with Article 44 Paragraph (1) of Article 5 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The Panel of Judges in its verdict stated that the prosecution of the Military Prosecutor at the Military Prosecutor's Office II-07 Jakarta against the Criminal Case on behalf of the Defendant mentioned above, namely PP, was unacceptable and charged the State with the cost of the case.

- Second, in decision Number 25-K/PMT II/AD/III/2022 dated April 26, 2022, on behalf of GES. For the defendant's actions, the Military Inspectorate gave an indictment as stipulated in Article 5 letter a of the Juncto Article 44 Paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The Panel of Judges in its verdict stated that the prosecution of the Military Inspectorate at the Jakarta High Military Prosecutorate II against a criminal case on behalf of the Defendant, was unacceptable and charged the State with the cost of the case.

It can be seen from the two decisions above that the Military Inspectorate prosecuted soldiers who committed physical violence within their domestic scope with Article 44 Paragraph (1) of the PKDRT Law, Article 5 letter a Juncto Article 44 Paragraph (4) of the PKDRT Law, Article 5 letter b Juncto Article 44 Paragraph (2) of the PKDRT Law. Judge of the Military Court II-08 Jakarta in decision Number 110-K/PM. II-08/AD/III/2022 and the Jakarta High Military Court decision Number 25-K/PMT II/AD/III/2022 mentioned above regarding domestic violence cases whose complaints were withdrawn by the victim's witnesses at the trial, the Panel of Judges in its consideration stated that although the conditions for revoking the complaint stipulated in Article 75 of the Criminal Code had expired, the Panel of Judges granted it and stated that the legal process of this case must be stopped.

Based on the Supreme Court decision No. 2238 K/Pid.Sus/2013 dated March 5, 2014, which reads that because there has been peace between the Defendant and Witness-1 which has reached an agreement to foster a happier household so that the balance that is disturbed by the existence of the crime has been restored because the peace that occurred between the complainant and the reported party contains a high value that must be acknowledged, because after all, if this case is stopped, the benefits are greater than if it is continued, this is in accordance with the principles of Restorative Justice and the purpose of the PKDRT Law, which is to maintain a harmonious and prosperous household integrity.

Likewise, based on the Supreme Court of the Republic of Indonesia Decision Number 1600-K/Pid/2009, because there has been peace that has been reached an agreement to establish a harmonious relationship between the two parties in providing care, maintenance, protection and education of the children who are currently being cared for by the Defendant, so that the balance that is disturbed by the peace that occurs between the complainant and the reported party contains a high value that must be acknowledged. Because if this case is stopped, the benefits will be greater than continuing. This is in accordance with the principle of Restorative Justice and the purpose of the PKDRT Law, which is to maintain good, harmonious and prosperous relationships. Although there is no basis regarding the principle of Restorative Justice in the Military Criminal Justice System which is a reference or guideline for the Panel of Judges in applying the principle of Restorative Justice, the Military Judge in his consideration has considered in the decision related to the case of domestic violence where the complaint was withdrawn by the victim's witness even though the complainant had passed the revocation period.

Judges in carrying out their duties, obligations and functions in the judicial field are obliged to maintain the independence of judges. With the independence of judges in deciding criminal cases, it is hoped that it will produce a fair verdict for people who seek justice. Based on the provisions of Article 5 of Law Number 48 of 2009 concerning Judicial Power, in essence, it states that:

1. Judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society.

2. Judges must have integrity and have a good personality, honesty, fairness, professionalism and experience in the field of law.

3. Judges are obliged to obey the Code of Ethics and the Code of Conduct for Judges.

The provisions of the Article can be explained that the role of the judge is very large in determining whether a defendant is wrong or not. To be able to realize the judicial goals in the trial process, of course, a judge who is careful, responsible and also masters the course of the trial is needed. The judge must also be objective in the trial to the interests of all parties, both the defendant, the prosecutor and the witnesses in order to obtain a verdict based on justice.

The settlement of domestic violence cases in the Military Criminal Justice System related to the application of Restorative Justice does not yet have rules, but the Panel of Judges in its decision has considered the principle of Restorative Justice which is a legal breakthrough that can be used as jurisprudence in resolving domestic violence cases within the TNI.

One of the goals of criminal law is to restore the balance that occurs due to criminal acts, so that starting from this view, the purpose of criminal restorative justice teaches that conflicts called crimes must be seen

not solely as violations against the State and the public interest but conflicts also present the disruption and even disconnection of relationships between two or more individuals in community relations. and the judge must be able to facilitate conflict resolution that satisfies the disputing parties. The application of restorative justice by the Panel of Judges to the domestic violence case, according to the author, is in accordance with the wrong purpose of making the PKDRT Law, which is to maintain a harmonious and prosperous household integrity and the judge does not deviate from the provisions of Article 51 of the PKDRT Law and Article 75 of the Criminal Code because it is clear that the mandate of the PKDRT Law and between the perpetrator and the victim have forgiven each other and improved their households so that they are harmonious.

In accordance with the provisions for the termination of prosecution based on restorative justice as referred to in article 1 of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, the judges decided not to accept the demands of the Military Inspectorate in cases Number 110-K/PM. II-08/AD/III/2022 and omor 25-K/PMT II/AD/III/2022:

- a. Criminal Acts' Subjects, Objects, Categories, and Threats
- b. the history of the crime's conduct
- c. the level of reprehensibility
- d. Damages or outcomes brought on by illegal activity
- e. The Price and Advantage of Managing Cases
- f. returning to everyone's original status.
- g. between the victim and the suspect's state of peace.

## CONCLUSION

In Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in addition to prison sanctions, there are also alternative sanctions in the form of fines or additional criminal counseling. However, in its implementation at the Military Court II 08 Jakarta from 2016-2022, there have been no criminal sanctions for counseling on domestic violence perpetrators because there are several factors, including: a. The criminal sanctions that are embraced still impose many prison sentences, b. Prison sentences are still considered an adequate means to overcome domestic violence crimes, c. There is no other type of alternative criminal sanction other than imprisonment that is more effective if a criminal other than that is applied, d. The prosecutor demanded that the punishment of imprisonment only, e. In court, the application of sanctions in the form of participating in a counseling program cannot be applied because there are conditions that must be met.

Through restorative justice, the role of law as an effort to resolve conflicts is not prioritized and focuses more on efforts to reconcile the perpetrator and the victim, avoid imprisonment and be victim-oriented because of the suffering he experienced, so that the perpetrator is expected to be aware of his responsibilities and mistakes and prevent them from being re-committed in the future. The application of Restorative Justice in the settlement of cases of domestic violence by TNI Soldiers at the Military Court II 08 Jakarta can be seen by the Judge's decision to stop the case as stated in decision Number 110-K/PM. II-08/AD/III/2022 and omor 25-K/PMT II/AD/III/2022 due to a request for the termination of the case by the victim. The goal of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which is to maintain the integrity of a peaceful and prosperous household, and Article 1 of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice serve as the foundation for the application of restorative justice in domestic violence cases. This demonstrates that, despite the lack of a rule governing the use of restorative justice in the military legal system, the Panel of Judges employs it when making decisions because military personnel are governed by the Criminal Code in addition to the Military Criminal Code and other laws and regulations.

To make the terms of Article 50 letter on the additional crime of counseling clearer and easier for judges to execute right away, the government should quickly amend or revise them. Furthermore, the government must act quickly to support the establishment of counseling facilities that can assist both victims and offenders of violence.

The government should immediately regulate provisions related to restorative justice in the Criminal Code as well as the Military Criminal Code and special legislation, given that restorative justice can resolve a great number of criminal cases. However, up until now, restorative justice—which should be part of the criminal procedure law—has not been regulated in the Criminal Code, leading to varying understandings and interpretations. This is to ensure that the military justice system's implementation of restorative justice has a defined foundation and set of rules.

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