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POLICY IMPLEMENTATION OF MILITARY DISCIPLINE BASED ON LAW OF THE REPUBLIC OF INDONESIA NUMBER 25 OF YEAR 2014

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ABSTRACT

In the life order of military soldiers, there are rules of soldier discipline that are useful for enforcing discipline in order to minimize soldier violations. The problem discussed in this study is how a soldier can be subject to disciplinary punishment as mandated by law number 25 of 2014 concerning Military Discipline Law. The purpose of this study is to describe and analyze the implementation of disciplinary enforcement in order to minimize the level of disciplinary violations by soldiers and to describe and analyze the factors that encourage and hinder disciplinary enforcement. The method used in this study is a normative juridical approach to reveal problems in the field related to military disciplinary law against violations by family members. The results of the study show that the settlement of Military Discipline Law Violations is to educate and prevent the recurrence of TNI Soldier Discipline Law Violations, Policy Law number 25 of 2014 concerning military discipline law requires that the imposition of punishment be handed over to superiors who have the right to punish, Implementation of military discipline punishment for soldiers the military for violations/criminal acts committed by members of their families should not be subject to articles 8 and 9 of Law number 25 of 2014 concerning Military Discipline Law, this is because the legal subject imposed is a Military Soldier, while the family is a civilian.

KEY WORDS

Policy implementation, military discipline law, military soldier, normative juridical.

Based on the explanation of Law of the Republic of Indonesia Number 25 of 2014 concerning Military Discipline Law, the Indonesian National Armed Forces (TNI) is an integral part of the Indonesian people/society, the TNI was born from the arena of the nation's struggle for independence, the TNI was raised and developed together with the Indonesian people in maintaining and filling in the independence that has been achieved. The main tasks of the Indonesian National Armed Forces are to uphold state sovereignty, defend the territorial integrity of the Unitary State of the Republic of Indonesia and protect the whole nation and all of Indonesia's bloodshed from threats and disturbances to the integrity of the nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which is implemented by military operations for war or military operations other than war.

According to the elucidation of Law Number 3 of 2002 concerning National Defense, it is explained that the era of globalization which is marked by the development of advances in science, technology, communication and information greatly influences the patterns and forms of threats. Threats to state sovereignty which were originally conventional (physical) in nature and are currently developing into multidimensional (physical and non-physical), both originating from abroad and from within the country. These multidimensional threats can come from ideological, political, economic issues, socio-cultural and security issues related to international crimes, including terrorism, illegal immigrants, the dangers of narcotics, theft of natural resources, piracy and environmental destruction (Surjani, 2003). All of this causes defense issues to become very complex so that their resolution does not only rely on the department in charge of defense, but is also the responsibility of all relevant agencies, both government and non-government agencies (Siagian, 2003).

The norms contained in TNI military discipline law are formulated in Law number 25 of 2014 concerning military discipline law which has binding power and high moral values which serve as guidelines for members of the TNI for behavior in accordance with moral values



(Bardach, 1997). Violation of TNI military discipline law then for TNI members the settlement of cases related to violations of discipline and the code of ethics, there are legal problems, including: the decision of the disciplinary hearing or the trial of the code of ethics is not yet binding and not final, because the final decision in imposing the law lies with the superior who has the right to punish (Ankum), apart from that, what if the person committing the violation is a family member of an active TNI soldier, so that the court's decision is limited to only giving recommendations to Ankum for the decision handed down based on the legal facts revealed in the trial.

With the dynamic development of this situation, the function and role of the Military Police within the TNI is very important because it will have an impact on upholding the discipline of TNI members and especially upholding the TNI's code of ethics. The professionalism of the TNI is desired not only by members of the TNI, but by all Indonesian people, because the function of national defense is fully supported by the role of the TNI as the main component of defense through the professionalism of the TNI, all of which cannot be separated from the role of the Military Police in enforcing military discipline law for TNI members.

Meanwhile, the implementation guideline for making an organization's code of ethics, including the TNI, is culture, especially cultural values and the objectives of the organization's activities. The existing laws and regulations governing military discipline law do not fully regulate the imposition of disciplinary punishment for active military personnel due to violations committed by family members which results in each party having a different interpretation of the law, so that in the end it will be able to open up opportunities for manipulation in disciplinary and policy enforcement which in turn creates uncertainty.

Discipline enforcement in TNI units is carried out by providing various understandings and affirmations to soldiers regarding military disciplinary regulations and other regulations that apply in society, which are carried out during morning/afternoon assembly, commander's hour or through legal counseling from related agencies. Imposing sanctions on soldiers who violate the rules in the form of disciplinary action or disciplinary punishment as stipulated in the regulations for the discipline of soldiers of the Indonesian National Armed Forces. Disciplinary action carried out by a superior who directly saw the soldier who violated it or based on a report, while disciplinary punishment was carried out by the unit commander through the Disciplinary Punishment Parade Session or delegated to the Military Court. Sanctions were given ranging from physical actions in the form of running, cleaning, entering unit cells, Military Police cells and Military Detention Centers to administrative actions such as delaying promotion, being released from office, being postponed to carry out education/schooling, and dishonorable dismissal.

There are many concepts in the selected policy implementation studies. Dunn said that there are two perspectives related to implementation studies, namely the point of view of state administration and political science. Basically implementation is to carry out policies that must have objects and can have an impact on whether or not a policy is achieved. Grindle stated that the implementation of public policy is actually not just related to the mechanism for elaborating political decisions into routine procedures through bureaucratic channels, but more than that, namely regarding issues of conflict, decisions and who will get something from implementing a policy that has been implemented regulated/promulgated (Grindle & S., 1980).

This study aims to find out and analyze how the types of violations of military discipline law according to Law Number 25 of 2014 concerning Military Discipline Law and how to resolve military discipline law violations according to Law Number 25 of 2014 concerning Military Discipline Law by using normative juridical research methods.

METHODS OF RESEARCH

According to Siagian, discipline can be interpreted as an act of a leader to encourage members of the unitary organization to meet demands by going through various provisions. In line with this, according to Hasibuan it is stated that discipline is an awareness and



willingness of a person to comply with all organizational regulations and social norms that apply in the community environment.

Several strategies and efforts that can be taken regularly and continuously in accordance with the basic regulations for TNI soldiers include:

a. Planting soldier awareness, related to the importance of discipline in soldiering and social life which obliges a soldier to always be an example and role model for the community.

b. Provision of understanding (socialization/coordination/cooperation) regarding various soldier discipline regulations that apply to soldiers and their families accompanied by a *reward and punishment* (reward and punishment).

In this case, discipline demands sanctions, namely certainty and necessity. Certainty and necessity here mean that anyone who violates and ignores the rules that have been set will receive action. However, the disciplinary action taken is not merely giving punishment, but rather conditioning so that the violator obeys the organizational rules in the future which will have an impact on equitable justice. Thus a leader who can give sanctions must be able to apply them appropriately according to the violations committed by his subordinates. With this discipline, a leader must be truly fair, with a fair attitude that will rule out the possibility of suspicion arising from his subordinates that sanctions are not in accordance with the gravity of the violations committed.

However, in an effort to get highly disciplined soldiers, encouragement is needed both from individual soldiers and from the environment. Strong encouragement from within arises from the existence of a strong individual awareness of the discipline itself. This requires a leadership role in a certain environment in creating conditions that demand awareness from soldiers in carrying out actions according to applicable regulations, so that the soldier will get output in the form of a sense of security and comfort in carrying out every activity and task. Meanwhile, strong encouragement from outside arises as a result of external influences, both from the leadership and the environment.

In order to avoid the existence of various internal and external conflicts as a result of rigid discipline, it is necessary to have ability in leadership from the leadership element to create a condition of feeling safe and comfortable for soldiers to carry out their duties on the basis of belief in truth in accordance with applicable regulations, provide tolerance, space for movement, innovation and creation from soldiers, so that a flexible discipline will be created.

The method used in this study is qualitative where according to Bogdan and Taylor it is stated that qualitative is a research procedure that produces descriptive data in the form of written or spoken words from the people and actors observed. Another opinion was put forward by Kirk and Miller who defined qualitative as a certain tradition in knowledge that fundamentally depends on observations of humans in their own area related to these people in their language and in their terms. Based on some of these meanings it can be said that qualitative research is research conducted to understand a phenomenon experienced by research subjects as a whole and by means of descriptions in the form of words and language using various natural methods (Moleong & J., 2007).

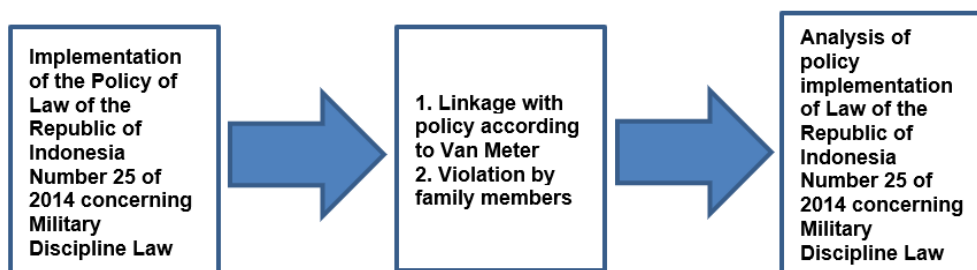


Figure 1 – Policy implementation framework

There are two kinds of data sources for this research, namely primary data and secondary data (Rianto, 2006). Primary data is data taken from the first source in the field which was obtained through interviews with informants who were met in the field, while



secondary data is data obtained in the form of decrees and documents related to the Implementation of the Policy of Law of the Republic of Indonesia Number 25 of 2014 concerning Discipline Law Military, as well as data and information related to this research problem (Tahjan, 2007).

To obtain the data needed in this study, researchers used several procedures, namely interviews, observation and literature study. Data testing in this study was carried out using techniques *triangulation* namely through: *check*, *re-check* and *crosscheck* to the data obtained from the theory, methodology and perceptions of researchers.

The data analysis technique in this study was carried out in an interactive form on 3 (three) main components namely; data reduction, data presentation and conclusion. This research was conducted over a period of 12 months.

The implementation of the policy in this study is the Implementation of the Policy of Law of the Republic of Indonesia Number 25 of 2014 concerning Military Discipline Law against acts of violation committed by family members of soldiers. On the basis of the researcher's understanding, the researcher maps this framework in the figure as follows.

RESULTS AND DISCUSSION

In the case of Settlement of Military Discipline Law Violations as mandated in the Military Law, where TNI Soldiers who commit TNI Soldier Discipline Violations are subject to disciplinary action and/or are sentenced to TNI Soldier discipline. Take disciplinary action against any subordinate who commits a violation of the TNI Soldier's Disciplinary Law.

The resolution of the Violation of Military Discipline law that was carried out was a disciplinary action that was given immediately by each superior to his subordinates in the form of physical action and/or verbal warnings that were educational in nature and prevented the recurrence of the Violation of the Law on Discipline of TNI Soldiers. Disciplinary action does not remove the authority of superiors who have the right to punish (Ankum) to impose disciplinary punishment on TNI Soldiers. Settlement of TNI Soldier Discipline Law Violations is carried out through various activities, including: examination, sentencing, execution of sentences and recording in the punishment book. Legal evidence that applies in the Settlement of Violations of TNI Soldier Discipline Laws includes evidence, letters, electronic information and/or electronic documents, witness statements, expert statements and suspect statements.

Sanctions or punishments are clear, firm and fair for any violations committed by soldiers. The application of punishment for soldiers who violate is not only to make the soldier deterrent, but more than that it must be able to motivate the violators so they can change behavior that is not good/breaking the rules for the better. The punishment imposed must fulfill three aspects, namely a sense of fairness, being able to provide a deterrent effect and being able to prevent other people from committing the same offense.

The results of interviews with informants have shown that the general principle in resolving military disciplinary violations is to settle cases as soon as possible. Thus, the emphasis is on the speed factor, on the grounds that the violations committed have just occurred so they are still fresh in the memory. Thus the immediate reaction from the leadership and Ankum to the violation that occurred will give a positive impression to the perpetrator of the violation and also to his colleagues. Ankum's delay or hesitation in acting can be interpreted as a weak and indecisive leadership which is the seed for decreasing the discipline and morale of the soldiers concerned (committing violations). Completion of disciplinary violations as soon as possible should not mean working carelessly and ignoring other factors. Proper sentencing can create a healthy and sincere environment for soldiers who are punished. Every violation, even the slightest, must be taken into action immediately and cannot be delayed.

Delay means it will provide opportunities for violations. A small offense if left unchecked will trigger a larger offense. Many people don't realize that every damage to values starts from small things. In psychology, it is known as the Tear Window or Broken Window theory, this theory was popularized by two criminologists namely George L. Kelling and Catherine M.



Coles. Through their studies, they both concluded that violations/crimes occur as an inevitable result of irregularities. It all starts with, say, the existence of a broken window which the owner ignores which will encourage other criminals to break other windows. In her book, *Tipping Point*, Gladwell explains that broken windows that are not repaired create an impression of indifference, so that in the near future there will be more broken windows, followed by vandalism and chaos (Berman, J., & Kerner Miroslav, 1958).

The punishment given by the leadership to members who violate it has the ultimate goal of creating disciplinary conditions both individually, in groups and as a unit by creating an attitude of soldiers who think in an orderly manner, act in an orderly manner, and behave in an orderly manner according to existing rules. The condition of discipline does not grow by itself but is born and starts from personal discipline, leading to family discipline, group discipline, class discipline which eventually becomes unitary discipline and leads to the realization of a solid TNI organization to support national defense. On the other hand, disorder begins with personal indiscipline, disorder in using work time which then gives rise to administrative irregularities and official life, imperceptibly leading to disorder in carrying out official duties. The official rules are clear, the legal instruments are adequate, so even the slightest violation should be given a sanction. If the sanction is carried out consistently and consistently, it will certainly have a big meaning that will have a positive impact on the TNI.

Ankum can impose a disciplinary penalty in a disciplinary hearing. In imposing disciplinary punishment, Ankum must strive for justice as well as providing a deterrent effect so that the violator does not violate military discipline law in the future. Ankum's decision in imposing a disciplinary punishment was set forth in a Disciplinary Decision Letter. The disciplinary punishment imposed by Ankum in a disciplinary hearing was carried out immediately after the disciplinary punishment was imposed. In the case of light detention, discipline convicts can be employed outside the place where they are serving their sentence. However, those sentenced to discipline with severe detention cannot be employed outside the place where he is serving his sentence. Disciplinary punishments are recorded in the penalty book and data book of personnel who commit violations of military discipline law. All technical or implementation provisions contained in the military discipline law are regulated through a decision by the TNI commander (Henianti, 2017).

The policy of Law of the Republic of Indonesia number 25 of 2014 concerning military discipline law requires that military discipline violations committed by members of the military in resolving cases be handed over to superiors who have the right to punish. Ankum's authority attached to the position of a Commander or Superior. Settlement of Military Discipline Law Violations as referred to in Article 25 of Law Number 25 of 2014, namely actions of Military Discipline, and Military Discipline Punishment.

In Article 8 of Law Number 25 of 2014 there are 2 types of violations consisting of all actions that are contrary to official orders, official regulations or actions that are not in accordance with military regulations, acts that violate criminal laws and regulations that are so mild in nature.

Types of Military Discipline punishments are contained in Article 9, namely reprimand, light disciplinary detention for a maximum of 14 days, and severe disciplinary detention for a maximum of 21 days.

In Military Criminal Acts, Military Criminal Law is part of positive law; Military Criminal Law is referred to as Special Criminal Law which only applies to Military Soldier, those who are based on the law are equated with soldiers, members of a group or position or body or who are equated or considered as soldiers based on the Law, person who does not belong to this group but upon the decision of the Commander in Chief with the approval of the Minister of Justice must be tried by a court within the Military Court environment.

Soldiers who commit a criminal act have violated the provisions of the Military Criminal Law and General Criminal Law. Military Criminal Law is based on KUHPM and KUHP as well as other laws. Post-reform TNI Soldier Discipline Sanctions are administrative sanctions and eliminate criminal sanctions for disciplinary law. Elimination of criminal sanctions here is an improvement in law enforcement within the military environment (Arliman, 2015). Disciplinary sanctions are different from criminal sanctions. Disciplinary sanctions refer more to



administrative matters, while criminal sanctions refer more to the behavior of parties that impact the public in general. Administrative sanctions are preventive or preventative for every TNI soldier so that he does not violate the law.

Administrative sanctions in the post-reform law enforcement of TNI soldier discipline aim to:

- Make TNI Soldiers aware of their negligence of responsibility and provide enthusiasm and understanding for TNI Soldiers to respect the applicable regulations more;
- Give a deterrent effect. This is to warn other soldiers not to do the same thing, because administrative sanctions are fair, balanced and have a legal basis;
- Protecting every TNI Soldier personnel in carrying out their duties is not merely giving punishment to personnel but more to coaching, post-reform TNI Soldier disciplinary administrative sanctions are gradational or multilevel with the aim of fulfilling a sense of justice.

Post-reform TNI Soldiers are implemented based on the level of disciplinary violations of TNI Soldiers which are mild, moderate, and severe. Categorized as a minor level of TNI Soldier discipline violation if it has a negative impact on the unit. Categorized as a moderate level violation of TNI Soldier discipline, if it has a negative impact on the TNI institution. Categorized as a serious level violation of TNI Soldier discipline, which has a negative impact on the government and the state. Mild disciplinary sanctions in the form of verbal warnings and written warnings. Moderate disciplinary sanctions in the form of postponement of promotion, official treatment for TNI Soldiers being temporarily dismissed from office and demotion to a lower level for 1 year. Severe disciplinary sanctions in the form of temporary dismissal from office, extension of temporary dismissal from office and honorable discharge not at his own request.

Soldier Discipline Act, Soldier Discipline Ordinance, and other regulations related to military life. According to Article 3 paragraph 1 of the Law on the Disciplinary Law of ABRI Soldiers it states that "To uphold the life order of the Indonesian Armed Forces, every soldier in carrying out his duties and obligations must behave and apply discipline". Discipline for a member of the TNI is a must and a way of life that must be followed. The formation of discipline for Soldiers starts from the basic soldiering education period. Coaching and nurturing is one way of forming discipline for soldiers. The pattern of guidance is given through the intensity of activities accompanied by doctrine for members of the TNI. Discipline is essentially:

- Obedience that is based on inner and outer awareness of service to the homeland and nation and is a manifestation of self-control not to violate official orders and the life order of soldiers;
- The mental attitude of every soldier leads to ensuring the unity of mindset, attitude patterns and action patterns as the embodiment of the Sapta Marga values and the Soldier's Oath;
- Characteristics of soldiers of the Indonesian Armed Forces in carrying out their duties.

Within the TNI, the issue of soldier discipline is the main point or identity for the military which is inseparable, so that in juridical point this discipline has been regulated in the form of laws and regulations, as established Law Number 25 of 2014 concerning Military Discipline Law concerning. From a military point of view, discipline is an important point for TNI soldiers in their daily activities which have an impact on the success of the TNI's main tasks. TNI soldiers obey the discipline to show the behavior and mentality of TNI soldiers. Discipline for members of the military or TNI soldiers is an obligation and a way of life that must be fulfilled without objection, because the application of discipline existed during the basic soldiering education period. One of the formations of discipline by providing guidance and care through the intensity of activities accompanied by doctrine as a way of forming discipline for a soldier (Rambe, 2019.).

According to Markoni, that military discipline law basically regulates all the treatment of members in a troop, so that military discipline law serves as a reference for commanders to govern their troops, because the commander's responsibility plays an important role in



enforcing and fostering military discipline law (Adegbite, 2017). Military discipline law is a rule and norm whose purpose is to uphold, discipline, and life principles that apply to members of the military. As for the enactment of military discipline law to realize the development of units and members, increase discipline for the military, and uphold disciplinary law by implementing expediency and justice.

With regard to disciplinary violations that occurred within the military environment, previously throughout the phenomenon of military discipline cases the legal subject that violated it was definitely committed by members of the military. However, what if a family member commits a crime (who incidentally is not a member of the TNI), and results in the husband being a TNI soldier being also responsible for the actions committed by his wife and family members. This phenomenon occurs because wives and family members who belong to the extended TNI family cannot be separated from the military (Syamsul Ma'arif, 2014). An absolute statement cannot be separated from the military, namely the implementation of the duties of the TNI, since deciding to get married, the wife of a TNI soldier, including part of her husband's life in the military environment, is required to always take care of herself or maintain a good attitude towards both service and personal ties because the wife's attitude influences the duties of her husband (who is a member of the military).

Regarding the settlement of criminal cases by the wife of TNI soldiers, they were resolved through the General Court, because they violated the provisions of the ITE Law for criminal acts of hate speech and hoax news. The problems encountered in the provisions of Law Number 25 of 2014 concerning Military Discipline Law, as a basic reference for the imposition of disciplinary punishment for TNI soldiers. As a result, the wife and/or family members who commit criminal acts cause TNI soldiers to be subject to disciplinary punishment, not providing clear provisions in the military discipline law, that the wife's mistakes are the responsibility of a husband (in this case a TNI soldier).

In addition, the imposition of military discipline punishment should prioritize the coaching aspect. The aspect of the application of guidance on the imposition of disciplinary punishment for TNI soldiers because of his wife's crime has not fulfilled the principle of justice by imposing a soldier's sentence too quickly without proving the elements of an ITE crime committed by the wife first. The implementation of military discipline law must be based on principles, including:

- The principle of justice must be applied proportionally for each military to reflect or realize justice in the application of military discipline law rules;
- The principle of coaching, the aim is to increase the discipline and professionalism of soldiers as a form of training for the military;
- The principle of equality before the law, this principle applies in a hierarchical rank and is not special;
- The principle of presumption of innocence states that prior to imposing a disciplinary sentence that has permanent legal force, members of the military must be presumed innocent;
- The principle of hierarchy, that hierarchy or based on a tiered structure/levels of Anjum, means Anjum's authority in imposing military disciplinary punishment for members of the military;
- The principle of unity of command, states that in a military institution, commanders at their central rank are responsible for their subordinates and units, especially in fostering and enforcing military discipline laws; g. The principle of military interests, this principle prioritizes military interests in carrying out maintaining the security of a country;
- The principle of responsibility states that in military institutions a superior as a leader, role model and coach should be responsible for the treatment of TNI members to foster and strengthen military disciplinary rules, because superiors have the power to examine and impose disciplinary punishment on TNI soldiers under the authority of their commander;
- The principle of effectiveness and efficiency, that this principle should be carried out



as quickly as possible and in accordance with the objectives in administering military discipline law; and J. The principle of benefit, it is appropriate to apply benefits that affect the TNI in violations of military discipline.

Regarding the phenomenon of the imposition of disciplinary punishment for TNI soldiers against criminal acts committed by wives, on the legal basis of Article 8 letter a and Article 9 of Law Number 25 of 2014 concerning Military Discipline Law, for violating official orders. Explanation of the meaning of Article 8 letter a, states that all actions that are not in accordance with official orders, meaning that legal subjects who violate these provisions are shown to members of the TNI or members of the TNI who commit criminal acts, then these members of the TNI must be held accountable for their criminal actions, so that phenomenon occurred because the TNI soldiers did not comply with the orders of their superiors or leaders. An official order is a will related to the interests of military service, an official order from superiors is conveyed to his subordinates to be carried out as well as possible. Official orders can be delivered orally, in writing, and can be delivered in certain sign language that is easy to understand.

CONCLUSION

Based on the explanation starting from the background, problems and analysis of quantitative data, it can be concluded as follows:

- Settlement of the Violation of Military Discipline law that was carried out was a disciplinary action given immediately by each superior to his subordinates which was to educate and prevent the recurrence of the Violation of the Law on Discipline of TNI Soldiers.
- The policy of Law of the Republic of Indonesia number 25 of 2014 concerning military discipline law requires that military discipline violations committed by members of the military in resolving cases be handed over to superiors who have the right to punish.
- The imposition of military discipline punishment for military personnel for violations/crimes committed by members of their families should not be subject to Articles 8 and 9 of Law number 25 of 2014 concerning Military Discipline Law, this is because the legal subject imposed is a Military Soldier, who is equated with a soldier under the law, a member of a group or service or agency or who is equated or considered a soldier under the law, a person who does not belong to that group but by decision of the commander with the approval of the Minister of Justice must be tried by a court within the Military Court environment.

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