

Legality Of Disciplinary Punishment Against The Military For Violation Of The Information And Electronic Transactions Law By His Wife

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Abstract. In the 2019 and 2020 period, several wives of TNI Army members uploaded tweets on social media which caused a stir, especially among the TNI. Disciplinary punishment was imposed on the military member whose wife uploaded the tweet. The imposition of disciplinary punishment on the military member seemed forced because it seemed as if the military member was being punished for a mistake that was not his own, but rather his wife's. This research uses normative juridical research methods. The research results show that the disciplinary punishment imposed on a military member whose wife violated the ITE Law is legal because the punishment was imposed by Anjum as an authorized official and for the mistakes made by the military member and was stated in a decision based on the Military Discipline Law and its derivative regulations.

Keywords: Legality, Military Disciplinary Punishment, soldiers/military wives, ITE violations

1 Introduction

The progress of human civilization and culture, in the fields of science and technology, especially the sophistication of information, communication and transportation, has gone global, and has made the planet Earth smaller and seem to have no boundaries so that events in any one place on Earth occur quickly and in a short time. Briefly and even at the same time it can be known in other parts of the world. The role of information and communication technology in the era of globalization has placed it in a very strategic position because it presents a world without borders, distance, space and time, which has an impact on increasing productivity and efficiency. The influence of globalization with the use of information and communication technology has changed people's lifestyles, developed a new order of life and encouraged social, economic, cultural, defense, security and law enforcement changes in society.

In the period 2019 and 2020, several wives of Army military members uploaded tweets on social media that caused an uproar, especially among the military. Social media, which should be used wisely and can produce material benefits if used well, actually brings disaster to oneself and one's family. The perpetrator suspected of committing the crime was the wife of a soldier, but the husband of the person concerned, who worked as a military officer, also received sanctions in the form of disciplinary punishment. For example, detiknews reported that Serda J, a

non-commissioned officer in the Mounted Cavalry Detachment (Denkavkud), his wife commented sarcastically about the stabbing of Coordinating Minister for Political, Legal and Security Affairs Wiranto on social media (medsos). As a result, Second Sergeant (Serda) J was detained by his unit for 14 days and his wife was processed by the police. Serda J's wife commented on social media regarding news from one of the media regarding the incident of Wiranto being stabbed by a man in Pandeglang, Banten. His comments had a sarcastic tone, "Lesson for us...don't like to hurt people with words...the knife is still not sharp, sir...you still have a sharp tongue...", wrote Serda J's wife in her post on social media.[1] TRIBUNNEWS.COM, Jakarta reported, a TNI AD member from the Rindam Jaya unit, Sergeant Major (Serma T), was sentenced to military discipline in the form of light detention for not obeying official orders that had been issued repeatedly regarding the prohibition of misuse of social media by TNI AD Soldiers and their families. Furthermore SINDOnews.com reports about Wife Violating ITE Law, Kodim 0201/BS Personnel Taken Strict Action.[2]

The imposition of disciplinary penalties on military members whose wives violate the ITE Law raises pros and cons. For those who are against the imposition of disciplinary punishment on military members, it seems forced and unfair because it seems as if the military member is being punished because of a mistake he did not make, but a mistake made by his wife. Those who are pro consider that the imposition of disciplinary punishment is reasonable in order to enforce discipline and provide a deterrent effect.

Imparsial Senior Researcher Anton Aliabbas assessed that the TNI's actions in punishing its soldiers and even imprisoning them as a result of their wife's actions were excessive. This is because the perpetrator of the alleged criminal act was not the soldier in question. Kumara Puspita Yekti and Kristoforus Laga Kleden in his journal entitled Criminal Responsibility of TNI Soldiers for Criminal Acts of Wives and Family Members, he wrote that the imposition of disciplinary sentences by TNI soldiers for criminal acts of wives and family members was not carried out as well as possible and was not in accordance with the concept of military disciplinary punishment. This is due to the provisions of Article 8 letter a of Law no. 25-2014 as the legal basis for imposing disciplinary penalties on TNI soldiers is directed at the military and every person who is equated with the military based on the law (student soldiers, titular military, skilled citizens who are mobilized during war, and prisoners of war) who have committed acts.[3] Muradi, Chair of the Center for Political and Security Studies at Padjadjaran University, assessed that the steps taken by the TNI leadership to take firm action against TNI personnel because of his wife's attitude on social media were appropriate. "This firm action can have a deterrent effect on other soldiers and become a benchmark for the TNI leadership if similar incidents happen again in the future.[4]

In this article the author will discuss the punishment imposed from the legal aspect and raise the issue of "What is the legality of the disciplinary punishment imposed on military members whose wives violate the ITE Law?"

2 Method

The research method used in this writing is a normative juridical research method, namely using secondary data or library materials by examining library materials or secondary data. [5]

3 Results And Discussion

3.1 Disciplinary Punishment Against Military Member Due to His Wife Violating the ITE Law

In this article, disciplinary punishments against several military members are presented as a result of their wives committing violations of the ITE Law obtained from social media and research results from other authors.

a. Sergeant J

Serda J was detained for 14 days at Denkvkud Headquarters in Bandung, this was as a result of a violation of the ITE Law committed by his wife, namely making negative comments about the stabbing incident experienced by Coordinating Minister for Political, Legal and Legal Affairs Wiranto which occurred in Pandeglang, Banten. [6]

Based on the Dandenkavkud Decree Number Kep/3/X/2019 dated 12 October 2019 concerning the imposition of disciplinary punishment on Serda J, in the weighing section it is stated that Serda J is considered guilty of committing a disciplinary violation in not carrying out orders from superiors, and the actions of the non-commissioned officers above have violated the law. military discipline as regulated in Article 17 letter a of Law of the Republic of Indonesia Number 25 of 2014 and STR Dandkodiklatad Number STR/2/2019 dated January 8 2019.[7] In the Dandenkavkud Pussenkav Decree decided and determined:

- 1) Serda J was guilty of violating the discipline of being obedient and obedient to superiors, as well as upholding all service orders and directions given by superiors, based on the awareness that each order and direction was for official purposes.
- 2) Sentenced Serda J to a light detention sentence for 14 days in the Denkvkud Pussenkav detention room.
- 3) This disciplinary punishment decision is recorded in the punishment law and the relevant personnel book.

b. Colonel HS

Based on Danrem Decree 143/Halu Oleo Number Kep/21/X/2019 dated 12 October 2019 concerning the imposition of disciplinary punishment on Colonel HS.²³ Mentioned in the Decision in the weighing section are as follows:

- 1) Colonel HS has carried out actions that are contrary to official orders regarding the use of social media as regulated in Kasad's STR Number

STR/688/2017 dated 25 July 2017 and STR Pangdam XIV/Hsn Number STR/09/2019 dated 9 January 2019.

- 2) Colonel HS has violated the Military Discipline Law as regulated in Article 8 letter (a) of Law Number 25 of 2014 concerning Military Discipline Law.

In his decision Danrem as Ankum imposed the following disciplinary punishment on Colonel HS:

- 1) Colonel HS was guilty of committing a disciplinary violation, the person concerned carried out an act that was contrary to official orders, namely regarding the use of social media as regulated in the Kasad's STR Number STR/688/2017 dated 25 July 2017 and the Military Commander's STR XIV/Hsn Number STR/09/2019 dated January 9, 2019.
- 2) Colonel HS was sentenced to disciplinary punishment in the form of light detention for 14 days starting from the issuance of this decision.
- 3) This decision on disciplinary punishment is recorded in the punishment book and relevant personnel data book, case file along with other relevant documents.

c. Serma T

The Military Disciplinary Hearing of Rindam Jaya member Sergeant Major T on Monday (18/5/2020) was chaired directly by the Commander of Rindam (Danrindam) Jaya/Jayakarta Colonel Inf Ketut Gede Wetan Pastia as his superior. Sergeant Major (Serma T), was sentenced to military discipline in the form of light detention for 14 days because he did not comply with official orders that had been issued repeatedly regarding the prohibition of misuse of social media by TNI AD Soldiers and their families.

Commander Rindam Jaya as Ankum has issued Kep/23/V/2020 dated 18 February 2020 regarding the imposition of disciplinary punishment on Serma T²⁵, which in the decision considers that:

- 1) Serma T has committed a violation of military discipline in the form of failing to remind his wife to use social media to comment proactively against the government,
- 2) His actions above have violated the military discipline law as regulated in Article 8 letter a of Law Number 25 of 2014 concerning Military Discipline Law, as well as
- 3) The non-commissioned officer has never been given a disciplinary punishment.

And remembering firstly Law of the Republic of Indonesia Number 25 of 2014 concerning Military Discipline Law, secondly TNI Commander Regulation Number 44

of 2015 concerning Military Discipline Regulations, thirdly the Military Code of Ethics (Sapta Marga, Soldier's Oath and Eight (8) TNI Obligations), fourthly Kasad's Telegram Letter Number ST/3029/2018 dated 1 November 2018 concerning Orders and re-emphasis to prohibit the creation and uploading of videos containing military attributes, service activities and location sharing, activities in the military with themes and anything else without going through the permission of the upper command in stages and , fifth Kasad Telegram Letter Number ST/66/2020 dated 20 January 2020 concerning violations by TNI members both during service hours and outside service hours to avoid misuse of social media by members and their families.

In its decision, Rindam Jaya decided and stipulated:

- 1) Serma T, a member of Rindam Jaya, is guilty of committing a disciplinary violation in the form of Articles 1 and 8 of the HDM, the Military Code of Ethics in the form of Sapta Marga in the fifth (5th) clan, soldier's oath point 5 (five), Kasad telegram number ST/3029/2018 dated 1 November 2018 and Kasad Telegram Letter Number ST/66/2020 dated 20 January 2020;
- 2) Sentenced Serma T to disciplinary punishment in the form of light disciplinary detention for 14 days.

d. Chieft Sergeant K

Serda K (36 years old), TNI AD Soldier serving at Kodim 0102/Pidie Korem 11/LW Kodam Iskandar Muda, underwent a disciplinary punishment hearing, led by the Commander of Kodim 0102/Pidie Lt. Col. Arm Wagino S.E as a superior who has the right to punish (Ankum) at Makodim Pidie, Wednesday 20 May 2020. In the Judgment Consideration, it was stated that Serda K had committed a violation of Military Discipline in the form of neglecting to warn his wife about using social media to write provocative comments against the government. In this case, the person concerned has been suspected of violating Republic of Indonesia Law Number 25 of 2014 concerning Military Discipline Law (HDM), TNI Commander Regulation number 44 of 2015 concerning Military Discipline Regulations, Military Code of Ethics (Sapta Marga, Soldier's Oath and 8 Mandatory TNI). As a TNI AD soldier, Serda K was also stated to have not carried out several orders that had been issued, including Kasad's Telegram Letter Number ST/3029/2018 dated November 1 2018 and Kasad's Telegram Letter Number ST/66/2020 dated January 20 2020 concerning the prohibition of TNI members either official hours or outside official hours to avoid misuse of social media use by members of the Indonesian Army and their families.

Based on Dandim Decree 0102/Pidie Number Kep/04/V/2020 dated 20 May 2020²⁷ in the weighing section it is stated that firstly Serda K has committed a disciplinary violation by committing other acts that are inappropriate for a soldier and/or contrary to official orders or official regulations, secondly that the actions of the

non-commissioned officer above have violated the Military Discipline Law as regulated in Article 8 Letter a of Law Number 25 of 2014 concerning Military Discipline Law and Article 15 Letter k of Perpang TNI Number 44 of 2015 concerning Military Discipline Regulations, and thirdly that the non-commissioned officers mentioned above have never been sentenced to discipline.

In this decision the Dandim as Ankum decided and stipulated as follows:

- 1) Serda K was guilty of committing a disciplinary violation "All actions that are contrary to official orders, official regulations, or actions that are not in accordance with military regulations."
- 2) Serda K was given a disciplinary sentence in the form of light detention for fourteen (14) days starting from 20 May 2020 to 02 June 2020, the detention was entrusted to Subdenpom IM/1-3 Sigli.
- 3) This disciplinary penalty decision is recorded in the penalty law and the relevant personnel data book.

3.2 Legality of Disciplinary Punishment Against the Military Due to Violations of the ITE Law Committed by His Wife

a. Disciplinary Punishments are imposed by authorized officials because there are disciplinary violations committed by military members

1) Disciplinary Punishments are imposed by authorized officials

In disciplinary law, the official who has the authority to impose disciplinary punishment is the superior who has the right to punish or is called the Ankum. Based on its authority, Ankum consists of Ankum with full authority, Ankum with limited authority and Ankum with very limited authority as stated in Article 20 of the Military Discipline Law. Furthermore, Article 21 states that the Ankum has full authority and has the authority to impose all types of military disciplinary punishment on the military under its command authority. The Ankum has limited authority. has the authority to impose all types of military disciplinary punishments of reprimand and light detention on non-commissioned officers and enlisted officers who are under the authority of his command.

Disciplinary punishment is imposed by the unit commander who acts as the Commander of the military who commits a disciplinary violation. In imposing this

disciplinary punishment, Ankum also did not act alone, but held a staff meeting which was attended by Staff Officers from all fields.

The imposition of disciplinary punishments carried out on several military members as a result of their wives committing violations of the ITE Law in the results of the above research in the decision was signed by Dansat as Ankum. are as follows:

- a. Serda J, acting as Ankum and Commander of Denkvakud Pussenkav, imposed a disciplinary sentence on 12 October 2019.
- b. Colonel HS, acting as Ankum, Commander of Korem 143/HO, imposed the disciplinary punishment on October 12 2019.
- c. Serma T, acting as Ankum, Commander of the Enlisted Candidate School, Rindam Jaya, imposed military disciplinary punishment on 18 May 2020;
- d. Serda K, acting as Ankum, Commander of Kodim 0102/Pidie, imposed a disciplinary sentence on 20 May 2020.

2) There are disciplinary violations committed by military members

Disciplinary punishment is imposed by the unit commander who acts as the Commander of the military who commits a disciplinary violation. Ankum imposed a military disciplinary sentence based on the belief that there had been a violation of military disciplinary law committed by the suspect, supported by at least one piece of evidence as formulated in article 37 paragraph (3) of the Military Discipline Law.

The disciplinary penalties imposed on several military members as a result of their wives committing violations of the ITE Law in the results of the research above were due to disciplinary violations committed by their military members as follows:

- a. Serda J:
 - 1) Has committed a disciplinary violation by not carrying out orders from superiors.
 - 2) Has violated the military discipline law as regulated in Article 17 letter a of the Law of the Republic of Indonesia Number 25 of 2014 and STR Dandkodiklatad Number STR/2/2019 dated January 8 2019.
- b. Colonel HS:
 - 1) Has committed an act that is contrary to official orders, namely regarding the use of social media as regulated in the Kasad's STR Number STR/688/2017 dated 25 July 2017 and STR Pangdam XIV/Hsn Number STR/09/2019 dated 9 January 2019.
 - 2) Has violated the Military Discipline Law as regulated in Article 8 Letter (a) of Law Number 25 of 2014 concerning Military Discipline Law.
- c. Serma T:

- 1) Has committed a violation of military discipline in the form of failing to remind his wife to use social media to comment proactively against the government.
- 2) Has violated the military discipline law as regulated in Article 8 letter a of Law Number 25 of 2014 concerning Military Discipline Law.

d. Sergeant K:

- 1) Has committed a disciplinary violation, committed other acts that are inappropriate for a soldier and/or is contrary to official orders or official regulations.
- 2) Has violated the Military Discipline Law as regulated in Article 8 Letter a of Law Number 25 of 2014 concerning Military Discipline Law and Article 15

b. The disciplinary punishment is stated in the Decision

The imposition of military disciplinary punishment is outlined in the Military Disciplinary Punishment decision, this is formulated in article 37 paragraph (5): "The imposition of Military Discipline by Ankum is outlined in the Military Disciplinary Punishment decision". From this formulation it can be interpreted that military disciplinary punishment must be written, it cannot be carried out verbally.

In the Attachment to TNI Commander Regulation Number 44 of 2015 concerning Military Discipline Regulations, an example format for a Military Disciplinary Punishment decision has even been formulated. Example format number 10 regarding Format of Military Disciplinary Punishment Decisions (Military Discipline Law Violations), example format number 11 regarding Format of Military Discipline Punishment Decisions (Such Light Violations of Criminal Law) and example format number 12 regarding Format of Military Discipline Punishment Decisions (Those Alleged to Have Committing a Criminal Act)

The Military Disciplinary Punishment Decision as intended in Article 37 paragraph (5) must contain:

- 1) the identity of the Military who has been sentenced to Military Discipline includes full name, rank, soldier registration number, position, unit, date of birth, gender, religion and residential address;
- 2) facts of Violations of Military Discipline Law that have been committed;
- 3) aggravating and mitigating factors;
- 4) articles that are violated from applicable laws and regulations;
- 5) articles that form the basis of Ankum's authority; And
- 6) decision dictum containing:
- 7) reasons for imposing Military Disciplinary Punishments;
- 8) type of Violations of Military Discipline Law; And
- 9) type of Military Disciplinary Punishment imposed.

The disciplinary penalties imposed on several military members as a result of their wives committing violations of the ITE Law based on the research results above have been stated in a Decree, as follows:

- 1) Sergeant J:
Dandenkavkud Decree Number Kep/3/X/2019 dated 12 October 2019 concerning the imposition of disciplinary punishment on Serda J
- 2) Colonel HS:
Danrem Decree 143/Halu Oleo Number Kep/21/X/2019 dated 12 October 2019 concerning the imposition of disciplinary punishment on Colonel HS
- 3) Serma T:
Decree of the Commander of the Rindam Jaya Private Candidate School Number Kep/23/V/2020 dated 18 February 2020 concerning the imposition of disciplinary punishment on Serma T
- 4) Sergeant K:
Dandim Decree 0102/Pidie Number Kep/04/V/2020 dated 20 May 2020 concerning the imposition of disciplinary punishment on Serma T.

4 Conclusion

Even though the principle of legality is not explicitly stated in the Military Discipline Law Number 25 of 2014, the disciplinary punishment imposed on military members whose wives violate the ITE Law is legal because the punishment is imposed by the Unit Commander as Anlum as an authorized official and The mistakes committed by military members are based on the Military Discipline Law and its derivative regulations and are stated in a decision.

Applying the principle of legality in military discipline law should be applied according to the field of military discipline law and not applied to other fields of law so as not to produce different meanings. If there are changes to the Military Discipline Law, the principle of legality can be included in article 2 and in the Explanation to the article it is explained what is meant by the principle of legality in the Military Discipline Law.

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