

Legal Protection for Military Commanders from a Human Rights Perspective

¹Jarmud Asdod Samuel Tahun, ²Taufik Kurrohman

Study Program of Law Magister Hukum of Universitas Pamulang, South Tangerang City, Indonesia

E-mail : 1jarmudtahun73@gmail.com, 2dosen00643@unpam.ac.id

Abstrak

Berakhirnya era orde baru telah melahirkan gerakan reformasi di berbagai bidang kenegaraan diikuti dengan berkembang keterbukaan masyarakat dalam era globalisasi. Dalam bidang militer telah terjadi perubahan yang pesat seiring dengan adanya pemisahan antara TNI dan Polri yang pada era orde berada di bawah satu komando kekuasaan yaitu panglima ABRI. Lahirnya Undang-Undang Tentara Nasional Indonesia diikuti lahirnya Undang-Undang tentang Hak Azasi Manusia. Tujuan penelitian ini adalah untuk mengetahui bagaimana pertanggung jawaban seorang komandan militer pada saat diduga telah melakukan pelanggaran hak azasi manusia. Penelitian ini menggunakan pendekatan kepustakaan dengan merujuk kepada peraturan perundangan-undangan serta referensi para ahli yang berhubungan dengan objek penelitian. Hasil penelitian ini bahwa saat ini seorang komandan militer yang dianggap telah melakukan pelanggaran hak azasi manusia dalam memberikan perintah kepada anak buahnya belum diberikan perlindungan hukum oleh undang-undang.

Kata Kunci : Perlindungan, Komandan, Militer, Tanggung Jawab

Abstract

The end of the New Order era has given birth to a reform movement in various fields of statehood followed by the development of openness of society in the era of globalization. In the military field, there has been a rapid change along with the separation between the TNI and Polri which in the New Order era were under one command of power, namely the ABRI commander. The birth of the Indonesian National Army Law was followed by the birth of the Law on Human Rights. The purpose of this study is to determine how a military commander is accountable when suspected of having committed human rights violations. This study uses a literature approach by referring to laws and regulations and references from experts related to the object of the study. The results of this study are that currently a military commander who is considered to have committed human rights violations in giving orders to his subordinates has not been given legal protection by law.

Keywords: Protection, Commander, Military, Responsibility

A. Latar Belakang

In Law Number 26 of 2000 concerning the Human Rights Court, Military commanders cannot be exempted from criminal responsibility if they are unable to exercise proper control of troops or make no attempt to prevent the occurrence of gross violations of human rights. Military commanders are required to immediately report to the relevant authorities regarding the occurrence of serious human rights violations that have been committed by members of the troops below power and control it effectively.

In Article 1 paragraph (3) and (4) of Law Number 26 of 2000 concerning the Courts Human Rights states that:

1. The Human Rights Court, hereinafter referred to as the Human Rights Court, is a court specifically against serious human rights violations.
2. Every person is an individual, group of people, whether civilian, military or police. who are individually responsible.

Military commanders must remain criminally responsible, even if their actions are gross human rights violations were committed:

1. By members of the troops under his effective authority;
2. Not on the orders of a military commander or because of institutional policy;

The absolute view that "subordinates are at fault and the commander must be held responsible" from the perspective of human rights protection can result in military commanders being in very difficult circumstances and no longer free to carry out their activities, military commanders always overshadowed by worry even though not giving orders, has taken precautions and have attempted to report that serious human rights violations have occurred, but must bear criminal responsibility for acts that he did not commit directly. In reality, understanding the protection of human rights is only intended for people civilians, while military commanders are often considered to be the most potential parties to commit serious violations of human rights, so that human rights are violated often overlooked (Herawati, 2024).

In Law Number 39 of 1999 concerning Human Rights, Article 1 paragraph (6) formulated:

Human rights violations are any actions by a person or group of people including state officials, whether intentionally or unintentionally, or negligence which is unlawfully reducing, obstructing, limiting and/or revoking human rights human a person or group of people guaranteed by this law, and not get, or fear that you will not get, a fair legal settlement and true, based on applicable legal mechanisms

Thus, the implementation of state duties and obligations by military commanders is very important. risk of being subject to criminal sanctions, despite serious human rights violations happened not on his orders. The state should provide guarantees of protection for military commander who has devoted himself to the interests of the nation and state and not This means that there are serious cases of human rights violations in Indonesia, such as crimes against humanity must be accepted that all these acts occurred due to military commanders giving orders to commit human rights violations heavy and unable to exercise effective control of troops or make no effort prevent serious human rights violations committed by members his troops. Law Number 26 of 2000 should provide legal certainty and guarantees of protection for military commanders for acts they did not commit and Don't just hope that when you are examined

before the court, the judge will considering according to the evidence and his belief that the military commander was found not guilty, because there was insufficient evidence to show that the military commander must be subject to criminal sanctions (Yusniadi, A. 2024).

Law Number 26 of 2000 does not provide the slightest loophole for protection of human rights for military commanders, due to the implementation of the command principle responsibility seems to be applied absolutely. Legal protection for commanders military which needs to be implemented based on the principles of human rights protection, legal certainty and justice, equal treatment before the law and a sense of security to carry out activities. If in carrying out the duties and obligations of the state the military commander is still considered guilty even though he did not commit any serious human rights violations directly or indirectly, this constitutes a violation of human rights. on the military commander, because he has been treated as a tool that must carry out his duties correctly, perfectly and ready to be punished even though they have not committed any legal violations.

B. Problem Formulation

From the background description, the problem is formulated as follows:

1. Is the military commander in the case of serious human rights violations? requires legal protection if members of the troops are under the authority of and its control effectively committed serious human rights violations in where the act was carried out not on the basis of the commander's orders and policies institution?
2. Has Law Number 26 of 2000 provided protection of human rights violations against military commanders due to human rights violations heavy duty carried out by members of the troops under his authority and control effectively?

C. Literacy References

1. Military Commander

According to the Big Indonesian Dictionary, published by Balai Pustaka, 2nd Edition, 7th Printing, 1996, pages 514 and 515, Commander means: (1) head (leader) of troops (in a city or fortress area) (2) head (leader) of a group of troops; ,, company, ,, platoon, ,, squad. Command means (1) command; order. Command means: "give orders", (leading army movements, etc.)". Military means: "(1) army; army member; (2) military, while militarism means: "an understanding that bases military power on as a supporter of power; a government controlled by the military; a government who governs the country militarily (strict, disciplined, etc.)"

The term for the position of commanders at the regional level (Regional Commander) of the resort (Police Resort Commander, Military Resort Commander), district (Military District Commander) or sector (Chief of Sector Police) is simplified to "territorial commander". For the position commander who leads a unit of troops in the field, such as a battalion commander, commander company, squad commander and others are simplified with the term "troop commander in field" (Titahelu, 2006: 16). Law Number 26 of 2000 concerning the Court Human rights do not provide a legal definition for military commanders.

Article 42 paragraph (1) states: "A military commander or a person who effectively acting as a military commander can be held responsible for criminal acts which is within the jurisdiction of the Human Rights

Court, carried out by troops located under his effective command and control, or under his authority and its effective control and the crime is a result of the failure to proper troop control is carried out, namely:

- a. the military commander or such person knows or based on the circumstances at that time should have known that the troops were doing or had just done committing serious human rights violations; and
- b. the military commander or the person does not take appropriate action and necessary within the scope of his authority to prevent or stop the act or hand over the perpetrator to the authorized official to conduct investigations, inquiries and prosecutions.

2. Serious Human Rights Violations

According to the Explanation of Article 104 paragraph (1) according to Law Number 39 of 1999 regarding human rights, what is meant by serious human rights violations, namely genocide , arbitrary or extrajudicial killings trials (arbitrary/ extra judicial killings), torture, enforced disappearances, slavery or discrimination carried out systematically (systematic discrimination).

In connection with the definition of human rights violations, in Article paragraph (6) Law Number 39 of 1999 concerning Human Rights states that:

"Human rights violations are any actions by a person or group of people including state officials, whether intentionally or unintentionally or negligence which is unlawfully reducing, obstructing, limiting and/or revoking human rights a person or group of people who are guaranteed by this law and do not receive or fear that they will not receive a fair and correct legal resolution, based on the applicable legal mechanisms". The term human rights is translation from foreign languages "Droit de l'homme (French), Human Rights (language English). In its use in several countries, terms in English are also known. English which is stated to be the same as Human Rights such as Natural Rights, Fundamental Rightss, Civil Rights and so on (Prakorso dan Nirwanto, 1984: 28)

Although the concept of human rights was only formulated explicitly in the 19th century, 18, the origin of the opinion from a legal perspective and the principles that form its basis have existed for more than far back in history (Van Dijk, 2001: 11). Violation of human rights serious issues including: "slavery, the right to life, torture and cruel, inhumane and inhumane punishment, mass murder, ethnic cleansing (Baehr, 1999: 20). According to Manan, (2001: 59) crimes against humanitarian causes include torture of civilians based on political, racial or religious reasons. At the international level there is a general statement on Human Rights (Universal Declaration of Human Rights) dated December 10, 1948 is a milestone in the development of human rights, as a general standard to achieve success for all people and all nations (Mauna, 2001: 601-602). There is a view that human rights are of a relative particularistic nature, meaning that viewing human rights as a universal issue is also a problems of each country (Thontowi, 2002: 10-11).

In Article 1 paragraph (1) of Law Number 26 of 2000 concerning the Human Rights Court

Human Rights states that serious violations of human rights are violation of human rights as referred to in this Law. In relation to crimes against humanity as a form of serious human rights violations, there is a general principle that states that the elements of a crime (the elements of

crime) consists of:

- a. material elements that focus on actions (conduct), consequences (consequences) and circumstances (circumstances) accompanying an action;
- b. relevant mental elements in the form of intent , knowledge

(knowledge) or both (Muladi, 2000:2).

According to Article 30 of the Rome Statute which regulates the "mental element", there is intent (intent) if it is related to the action and is related to its consequences (consequence). The perpetrator intended to cause the consequence or was aware that in general the consequences will occur in relation to the act, whereas "knowledge" is defined as awareness that a situation has occurred or is the result of something. generally will arise as a result of the incident. The two elements in question, namely; (a) the act is carried out as part of a widespread attack (widespread) or systematic (systematic) directed against the civilian population, and (b) the requirement for the perpetrator to have knowledge (with knowledge) that the act committed is part of or intended to be part of a broader attack or systematically against the civilian population. Article 7.2.a of the Rome Statute states that, "the term of attack is delineated as a course of conduct involving the multiple commission of act referred to in paragraph 1 against any civilian population, competent to or in furtherance of a state or organizational policy to commit such attack" and furthermore, it can also be seen that from organizational policy says that under certain conditions, this crime can be committed by non-state actors.

Based on the history of its development, the term crimes against humanity first appeared times appeared in the trials of World War II criminals, in Germany The International Military Tribunal For The Tribunal of The Major War Criminals Nuernberg, 1946 (IMTN) as well as The International Military Tribunal For The Far East, Tokyo, 1948, (IMTT). Next after the Cold War until now, international courts have been formed, both ad hoc, that is; The International Criminal Tribunal For Former Yugoslavia, 1993 (ICTY). The International Criminal Tribunal For Former Yugoslavia, 1995 (ICTR) or permanent, namely; International Criminal Court, 1998 (ICC)

In Indonesia, the term crimes against humanity is legally and formally stated in Law Number 26 of 2000 concerning the Human Rights Court. The law stated that one of the authorities of the Human Rights Court is to try crimes Against Humanity as one form of serious human rights violation. Crimes against humanity must be carried out extensively or systematically against the population civil and not a spontaneous or sporadic crime. The birth of various human rights courts, both national in nature (Indonesian Ad Hoc Human Rights Court) both nationally and internationally is proof of the seriousness of humanity in the issue of human rights with creating a legal institution that is expected to be able to transfer justice to victims gross human rights violations in general and crimes against humanity in general specifically.

These various incidents are not just gross violations of human rights, but more than that, crimes against humanity have occurred (Kasim, 2001:1). internationally, can be interpreted as a form of criminal act which is considered to be detrimental to the entire international community, where every existing judicial institution in each country, including international courts, there are jurisdiction or authority to examine and try the perpetrators (Atmasasmita, 2000: 45). The international crimes, namely "International crimes are any conduct which is designated as a crime in a multilateral convention will a significant number of state parties to it, provided the instrument contains one of the ten penal characteristics".

The ten characteristics of criminal law as stated include:

- 1) Explicit recognition of proscribed conduct as constituting an international crime or a crime under international law,
- 2) Implicit recognition of the penal nature of the act by establishing a duty to prohibit, prevent, prosecute, punish, or the like,
- 3) Criminalization of the proscribed conduct,
- 4) Duty or right to prosecute,
- 5) Duty or right to punish the proscribed conduct,
- 6) Duty or right to extradite,
- 7) Duty or right to cooperate in prosecution, punishment, including judicial assistance penal proceedings,
- 8) Establishment of an international criminal jurisdictional basis,
- 9) Reference to the establishment of an international criminal court,
- 10) Elimination of the defense of superior orders (Bassiouni, 1986: 2-3).

Based on International Law, initially only three types of crimes were recognized international, namely:

1) Crimes Against Peace or Crimes Against Peace, which are also included in the violation of the provisions of the customary laws of war:

2) Crimes Against Humanity, which is defined as any form of cruelty against the civilian population (non-combatants) during the war took place (Syahmin, 1985: 46), however, long before the third types of crimes above have been designated as international crimes since the 18th century. The international community has recognized and acknowledged;

3) piracy and slavery as international crimes. Given the importance of trade relations at that time, then acts of piracy of merchant ships at sea (piracy) is seen as the enemy of nations. Likewise with the slave trade is seen as having degraded the dignity and values of human values.

D. Research Methods

In accordance with the title and problems that will be discussed in this research and so that can provide useful results, this research was conducted using legal research normative. The normative legal research method is a library legal research conducted by examining library materials or secondary data alone (Soerjono Soekanto, 2003). This research was conducted in order to obtain materials in the form of: theories, concepts, concepts, legal principles and legal regulations related to the subject matter. The scope of normative legal research according to Soerjono Soekanto includes: (a) Research on legal principles; (b) Research on legal systematics; (c) Research on the stages vertical and horizontal legal synchronization; (d) Comparative Law; (e) Legal history.

E. Results and Discussions

1. Position of Military Commander in Serious Violation Cases

a. Urgency of Legal Protection for Military Commanders

Military commanders need legal protection if members of their troops are subordinate power and control effectively commit human rights violations the seriousness is that the act was not carried out on the basis of the commander's orders and institutional policy. Criminal liability may be imposed on military commanders if a criminal act occurs due to the failure to properly control troops. If we pay attention to Article 42 of Law Number 26 of 2000 concerning Human Rights Court, then the limits regarding accountability have been emphasized military commanders as regulated in paragraphs (1) and (2), namely:

Article (1): Military commander or someone who effectively acts as a military commander. military commanders can be held responsible for criminal acts that occur in within the jurisdiction of the Human Rights Court, carried out by troops under its effective command and control, or under the authority and its effective control and the crime is a result of the failure to proper troop control is carried out, namely:

1. The military commander or such person knows or on the basis of the circumstances at that time it should have been known that the troops were carrying out or have just committed serious human rights violations; and

2. The military commander or the person does not take proper action and is necessary within the scope of its authority to prevent or stop the act or hand over the perpetrator to officials. who has the authority to conduct investigations, inquiries and prosecutions.

Article (2): A superior, whether a police officer or other civilian, is personally responsible. criminal sanctions for serious human rights violations committed by his subordinates who are under his effective authority and control, because The superior did not exercise proper control over his subordinates and correct, namely:

1. The superior knows or consciously ignores information that is clearly shows that the subordinate is doing or has just done gross human rights violations; And

2. The supervisor did not take appropriate and necessary action in the space the scope of his authority to prevent or stop such acts or hand over the perpetrator to the authorized official to be prosecuted investigation, inquiry and prosecution.

Paragraph (3): The acts referred to in paragraph (1) and paragraph (2) are threatened with the same criminal penalties as referred to in Article 36, Article 37, Article 38, Article 39, and Article 40. Law Number 26 of 2000 concerning the Human Rights Court needs to emphasize regarding the limits of the military commander's responsibility, explicitly considering that it can It just so happened that in the field a military commander had attempted to take control troops properly, but do not know if:

1. Troops under his effective command and control, or in under his effective authority and control the troops are being committing or having recently committed serious human rights violations;

2. Due to the absence of reports or information provided, the commander it does not take appropriate and necessary action within the scope his authority to prevent or stop such acts or hand over the perpetrator to the authorized official to be prosecuted investigation, inquiry and prosecution;

3. The word "know" or based on the circumstances at that time "should have known" that the troops are committing or have just committed a violation serious human rights (Article 42 paragraph (1) a), indicating a commander The military should not say "don't know" but "must know". Therefore this rule will cause military commanders to have no any reason to defend oneself from criminal liability.

4. Article 42 paragraph (1) letter (a) does not even acknowledge that negligence may occur and negligence so that criminal responsibility must be borne by the commander military.

Based on this, we emphasize the urgency of legal protection. towards the military commander, the author intends to provide some thoughts that needs to be reviewed in the context of revising Law Number 26 of 2000 concerning the Courts Human rights as stipulated in Presidential Decree Number 40 of 2004 regarding the National Action Plan for Human Rights 2004-2009 in Indonesia, namely:

1. Military commanders have the same rights and obligations as those of every Indonesian citizen. This position will place the position military commanders as legal subjects who must be held accountable criminal response if it fulfills the elements of the criminal act in question in the laws and regulations and will not be subject to criminal sanctions. forced to bear it if the military commander really did not intend to, not even knowing on the basis of information not given to him. If the law is made to force someone to remain responsible criminally liable even though no elements of the act are found crimes committed, then this constitutes a violation of human rights.

2. Military commanders in carrying out state duties and obligations have treated in a discriminatory manner, because they do not have the same rights before law, even though the purpose of law is to obtain a sense of justice and legal certainty for everyone, so that the implementation of the law is effective and useful as a means of protecting the rights and obligations of each person;

3. The formulation of Article 42 paragraph (1) letter (a) should read: "If" the commander military or someone knows or based on the circumstances at that time "really- true" or "knowing for certain" that the troops were carrying out or has recently committed a serious human rights violation; and (Article 42 Article (1) letter b) the military commander or the person concerned does not carry out appropriate and necessary action within the scope of his powers to prevent or stop the act or hand over the perpetrator to the authorized officials to carry out investigations, inquiries, and prosecution.

4. Should be in Chapter I General Provisions of Law Number 26 of 2000 regarding the Human Rights Court, it clearly states the legal definition of commander military, police superiors and civilian superiors. This is useful for understanding about accountability of military commanders both in the field and on higher level according to the rank and position of military commander

b. Obstacles for Military Commanders in Carrying Out Duties and Obligations Country

1. Implementation of Law Number 26 of 2000 concerning the Human Rights Court

In the implementation of Law Number 26 of 2000 concerning the Human Rights Court, especially Article 42 of Law Number 26 of 2000 concerning the Human Rights Court, regulates the accountability of military commanders in paragraphs (1) and (2).

The obstacles faced by military commanders when a situation occurs Force in armed conflict situations in the field can take the form of:

a) Inaccurate decision making based on considerations of space, time and targets in accordance with the estimated risks faced so that changes to the plan and a very fast strategy to attack the enemy, so control troops cannot be properly deployed due to attacks only focused on paralyzing enemy forces, but the risks that occur the occurrence of civilian casualties and civilian objects;

b) In facing the threat of internal armed rebellion, often the rebellion was supported by the civilian population who provided protection against rebels. If the rebel group does not wearing military uniforms or disguising themselves as civilians of course can result in attacks that are not targeted as made possible by humanitarian law, namely that the target of the shooting is only an object military and combatants or parties participating in the battle;

c) In preventing and stopping the civil war that occurred between armed community groups with other armed community groups, demand that military commanders act neutrally and not take sides any group. This can cause difficulties if the decision is taken to cause misunderstanding among one group of people armed which results in hatred and distrust society against troops under the effective control of the military commander concerned.

d) Both in military rebellions and in civil wars, this can happen. there was one group that did not accept the operation to restore order and security so as to invite civilians to join in the attack actual military units while carrying out their duties and the state's obligation to restore security in a conflict area. In this condition, of course, a difficult decision must be taken by the commander military to defend themselves against attacks that occur.

e) In very urgent circumstances in which the military commander must making decisions cannot be immediately implemented in the field, because in Law Number 3 of 2002 concerning State Defense Article 15 it is regulated that reviewing, assessing and formulating policies and assessing the risks of the policies taken are the task of the National Defense Council. This It may be difficult to implement in the field considering the military commander from the aspect of national defense interests consider it necessary to take an immediate decision because based on considerations of space, time and target, an attack needs to be carried out military as soon as possible without taking into account the risk that in the event of at that time it was inevitable that the troops under his control would committing serious human rights violations.

2. Commander Responsibility.

Criminal liability under the 1998 Rome Statute on the Establishment of The International Criminal Court for military commanders covers crimes that carried out within the jurisdiction of the International Criminal Court, namely:

a. A military commander or someone who effectively acts as a military commander is criminally responsible for crimes within the jurisdiction of the international criminal court committed by troops under his effective command or control or its authority and control effectively in controlling correctly for these troops, in this case:

1. The military commander or the person knows or is caused by the circumstances at that time, should have known that the troops it committed or will commit the crime and;

2. The military commander or the person fails to take steps to necessary and reasonable steps within his power to prevent or suppress their actions or refer the matter to authorized officials to carry out investigations, inquiries and prosecution.

b. Pleased with the relationship between superiors and subordinates which is not depicted in paragraph (1). A superior is criminally responsible for crimes which falls within the jurisdiction of the International Criminal Court carried out by subordinates who are under the authority and its control effectively, as a result of its failure to exercise appropriate control over these subordinates, in this matter:

1. The superior knows or consciously ignores the information which clearly indicates that his subordinates are commits or intends to commit the crime;

2. The crime involves activities that are within the responsibility of the effectiveness and control of the superior; and

3. The supervisor failed to take all necessary and reasonable action in within his power to prevent or suppress their actions or submit the problem to the authorized official to investigation and prosecution (Article 26).

From this description it is clear that according to international standards, then a commander is responsible for bearing criminal responsibility, even though not as a direct perpetrator of a crime in the field. In addition The commander remains responsible and can be subject to criminal penalties if his subordinates proven to have committed a criminal act of human rights violation.

3. Position of Military Commander for Communities in Conflict Areas.

Cases of alleged human rights violations such as in; Tanjung Priuk in Jakarta, Timika in Papua, Aceh and other cases that occurred in the era reform, such as; the Ambon case in Maluku, the Sampit case in Central Kalimantan, the Posso in Central Sulawesi, has caused many fatalities and is suspected carried out not only by the authorities against the civilian population, but also what happened between civilian population groups and other civilian population groups (Nugroho, et al., 2002: 1). This fact makes the Indonesian people realize the importance of guaranteeing protection of human rights.

c. Legal Protection for Military Commanders in Law Number 26 2000 on the Human Rights Court

1. Criminal Sanctions Against Military Commanders

In Law Number 26 of 2000 concerning the Human Rights Court, specifically

for military commanders even though they do not directly commit crimes, they are still may be subject to criminal sanctions if the troops are under his authority and control effectively committing a crime. This is what raises legal issues because of sanctions against military commanders who were not directly involved in carrying out criminal acts are not expressly regulated in this law. Law Number 26 of 2000 should be able to confirm the provisions-provisions regarding criminal sanctions that must be imposed if the military commander does not committing a crime directly, but due to the inability to do so proper management of troops.

The Existence of Human Rights Courts (HAM) in Criminal Cases Towards Humanity, Source from [http://www. Elsham.or.id/publikasi/padhoc/prog-Prog-Report 2010.pdf](http://www.Elsham.or.id/publikasi/padhoc/prog-Prog-Report%202010.pdf), an ad hoc human rights court that hears cases serious human rights violations in East Timor have brought 18 defendants to trial stages

divided into 12 case files. The trial process is divided into two stages. The first stage is carried out trial for three files, namely; Abelio Soares, Timbul Silaen and Herman Sedyono et al in the period March-August 2002. The second stage is the trial for nine files, namely: Eurico Guterres, Soedjarwo, Asep Kuswan et al., Endar Priyanto, Adam Damiri, Hulman Gultom, M. Noer Muis Jajat Sudrajat, and Tono Suratman, September-February 2002-2003.

There are five places where the incident occurred (*locus delicti*), namely the Liquisa church complex, Manuel Carascalao's house in Dili, Dili Diocese, Bishop Belo's house in Dili and the complex Ave Maria Church, Suai In the 12 indictments drawn up by the Public Prosecutor (JPU) also determined the time of the incident (*tempus delicti*) in April 1999 and September 1999. This is in accordance with Presidential Decree No. 53 of 2001 which was later replaced with Presidential Decree No. 96 of 2001 concerning the jurisdiction of the ad hoc Human Rights Court for the Timor case East. Finally there are restrictions regarding the place of occurrence of the case and the time cases of serious human rights violations occurred in East Timor. The indictment states there is criminal responsibility for serious human rights violations carried out by subordinates in relation to command responsibilities, because they do not carry out proper control of troops including ignoring information regarding serious human rights violations committed by subordinates including not taking appropriate and necessary action to stop gross human rights violations. Legal sanctions against perpetrators of serious human rights violations must be imposed accordingly with evidence and the judge's conviction in the court process so that it can be ensured the involvement of the accused in crimes against humanity.

Serious human rights violations committed by security forces because implementing a particular policy or program cannot be used as an excuse to escape from criminal responsibility. Therefore, to completing the disclosure is certainly not enough just to arrest people or individual groups but also actors "above" them and policy makers. State security institutions cannot justify or protect state officials who has been proven to have committed serious human rights violations. Criminal liability may be imposed for acts which intentionally, or due to negligence, including not taking steps which is necessary to prevent human rights violations and allowing human rights violations to occur.

2.The Relevance Between Legal Protection for Military Commanders and Effectiveness of Implementation of State Duties and Obligations

After the Second Amendment to the 1945 Constitution and the issuance of the Decree People's Consultative Assembly of the Republic of Indonesia Number XVII/MPR/1998 concerning Human Rights and the enactment of Law Number 39 of 1999 concerning Human Rights, The development of human rights in Indonesia is increasingly rapid. This is demonstrated again by the increasing the number of United Nations instruments on human rights that have been ratified and adopted by our national legislation. In an effort to develop human rights in Indonesia are implemented by taking into account the ratification of various United Nations instrument on human rights which can only be carried out as long as it does not conflict with Pancasila and the 1945 Constitution.

Human rights are limited by the rights and freedoms of others, morals, security and public order. as mandated by MPR Decree No. XVII/MPR/1998. Thus, human rights as a principle are indeed inherent in nature. universal, but as a system of human rights values it will differ between countries. with other countries, because it is influenced by the conditions and situations of the country. concerned. Human rights are basic rights that are inherent in humans by nature, universal and eternal as a gift from God Almighty, including the right to life, the right to have a family, the right to develop oneself, the right to

justice, the right to freedom, the right to communication, security rights and welfare rights which therefore may not be ignored or seized by anyone. Furthermore, humans also have rights and responsibilities that arise as a result of the development of life in society. Driven by the soul and spirit of the proclamation of the independence of the Republic of Indonesia

Indonesia, the Indonesian people, has a view regarding human rights and obligations human beings who are based on religious teachings, universal moral values and noble cultural values nation, and based on Pancasila and the 1945 Constitution. Taking into account the weight of the tasks and obligations that the state must carry out implemented by military commanders, legal instruments are also required which is able to provide legal protection to every military commander who while carrying out duties in the field so that the military commander can carry out their activities professionally and do not get caught up in worries about remaining be blamed if members of the troops are properly under his control committing serious human rights violations

3. The State's Obligations and Responsibilities to Protect the Position of Military Commanders

A military commander is also a citizen like any other have rights and obligations protected by laws and regulations, so that the implementation of state duties and obligations is in accordance with their respective areas of duty Each citizen must pay attention to aspects of protecting human rights for all civil servants. country.

In carrying out his duties and devotion to building society, nation and country, of course a military commander needs a sense of security. is a human right that must be guaranteed by law and fully implemented by government as guaranteed in Articles 29 and 30 of Law Number 39 of 2003. 1999 on Human Rights.

F. Closing

1. Conclusion

a. Military commanders in cases of serious human rights violations must be released from all forms of criminal liability if members of the troops are under its power and control effectively commit human rights violations. serious and the act was not carried out on the basis of the commander's orders, policy institutions, including all efforts to exercise proper control of troops has been done properly by the military commander.

b. Law Number 26 of 2000 does not yet provide human rights protection against military commanders to be released from criminal responsibility as a result of serious human rights violations committed by members of the troops in under its authority and control effectively, because it still needs to be emphasize in detail in the explanation of this law or in its implementing regulations regarding the criteria for appropriate and/or inappropriate control of troops to ensure this does not give rise to many interpretations regarding the limits of criminal responsibility which must be borne by the military commander, in accordance with his authority and regarding negligence, negligence, giving orders to do so or intentionally allowing serious human rights violations to occur

2.Recommendation.

a. Legal protection for military commanders needs to be implemented based on principles:

- protection of human rights;
- legal certainty and justice;
- equal treatment before the law;
- a sense of security in carrying out activities.

b. Law Number 26 of 2000 concerning Human Rights needs to be revised to provide legal certainty regarding the limitations of not exercising control “proper” and “improper” troops based on the situation and conditions in the field adjusted to the analysis of military interests such as in forceful circumstances in where the situation at that time requires a decision to be taken immediately based on considerations space, time and targets according to the estimated risks faced.

References / Bibliography :

- Adolf, 1991, *Aspek-Aspek Negara Dalam Hukum Internasional*, Rajawali Jakarta.
- Atmasasmita, R, 2000. *Hukum Pidana Internasional (Edisi Revisi)*. Bandung. Refika Aditama. Bandung.
- Baehr, P, 1999, *Human Rights University in Practise*, New York: St. Martin’s Press.
- Bassiouni, M. Cherif. 1986. *International Criminal Law. Vol. 1. Crimes*. Transnational Publishers. New York.
- Conde, H.V., 1999, *A Handbook of International Human Rights Terminology*, Lincoln: University of Nebraska, Press.
- Cotterrell, R. 1984. *The Sociology of Law: An Introduction*. Butterworths. London
- Curzon, L.B., *Criminal Law*, 1997, M&E Pitman Publishing, London.
- Dennis, I, 1997, *The Critical Condition of Criminal Law”* dalam Michael Freeman, ed, *Law and Opinion at The End of Twentieth Century*, Oxford University Press, London.
- Harris, D.J., 1998, *Cases and Material on International Law*, Sweet and Maxwell. London.
- Herawati, T., Nanda, H. S., Saputra, M. T., Yuliarty, R., & Widayanti, E. (2022). Implementasi Kebijakan Undang-Undang Republik Indonesia Nomor 25 Tahun 2014 Tentang Hukum Disiplin Militer Di Polisi Militer Daerah Militer II Sriwijaya. *Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA)*, 2(1), 155-170)
- Hatlam, H, 1987, *National Liberation Movement and International Responsibility*, Dalam Marina Spinedi dan Bruno Simma (edit) *United Nations Codification of State Responsibility*, New York: Oceana Publications, Inc.
- Hingorani, 1984, *Modern International Law*, edisi ke-2 Dalam Huala Adolf, 1991, *Aspek-Aspek Negara Dalam Hukum Internasional*, Rajawali Jakarta.
- Huda, C, 2006, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*, Edisi Pertama, Cetakan Ke-1, Prenada Media, Jakarta.
- Kasim, I, 2001 *Crimes Against Humanity Sebuah Tinjauan Hukum*, Makalah Kursus HAM Untuk Pengacara Angkatan V. ELSAM, Jakarta.

Kusnardi, M dan B.R., Saragih, 1983. Susunan Pembagian Kekuasaan Menurut Sistem UUD 1983 1945. PT Gramedia. Jakarta.

Kusumaatmadja, M, 1990, Pengantar Hukum Internasional, Binacipta, Bandung.

Maemoenah, M.M., 2003. Implementasi Azas-azas Hukum Tata Negara Menuju Perwujudan lusi Constituendum di Indonesia. Makalah Pidato Pengukuhan Guru Besar Fakultas Hukum Undip Semarang.

Manan, B, 2001, Perkembangan Pemikiran Dan Pengaturan Hak Asasi Manusia Di Indonesia, PT Alumni, Bandung.

Mauna, B, 2001, Hukum Internasional Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global, PT Alumni, Bandung.

Muladi, 2000. Prinsip-prinsip Pengadilan Pidana Bagi Pelanggar HAM Berat di Era Demokrasi. Makalah seminar tentang peradilan HAM diselenggarakan FH- Unisula Semarang, tanggal 12 April.

Muladi, 2001. Kejahatan Terhadap Kemanusiaan. Makalah Pelatihan HAM bagi Hakim ad hoc Depkeh dan HAM bekerjasama dengan The Asia Foundation. Jakarta, 7 Nopember 2001.

Nawawi. 1994. Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara. Badan Penerbit Undip. Semarang. 1994.

Nugroho, S.A., B. Silaban, A. Nurdin, L. Sasando, Ridwan, N. Ismail, A. Suherman, 2002, Naskah Akademis Penelitian Hak Asasi Manusia, Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, Jakarta.

Prakorso, D dan D.A., Nirwanto, 1984, Euthanasia, Hak-Hak Asasi Manusia dan Hukum Pidana, Ghalia Indonesia, Jakarta.

Rover, C, de, 2000, To Serve & To Protect Acuan Universal Penegakan HAM, (Penterjemah) Spardan Mansyur, Ed. I., Cet I. Diterjemahkan dari Buku Asli : To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces, PT Raja Grafindo Persada, Jakarta.

Schaffmeister, D, N, Keijzer dan PH. Sutorius, 1995, Hukum Pidana, Liberty, Yogyakarta.

Shaw, M.N., 1986, International Law, Butterworths, Edisi ke-2, Dalam Adolf, 1991, Aspek-Aspek Negara Dalam Hukum International, Rajawali Jakarta.

Shelton, D, 1999, Remedies in International Human Rights Law, New York: Oxford University Press.

Soekanto, S, 2002, Faktor-Faktor Yang Mempengaruhi Penegakan Hukum, PT. RajaGrafindo Persada, Edisi 1. Cet.4, Jakarta.

Sunggono dan Harianto, 1994, Bantuan Hukum dan Hak Asasi Manusia. CV. Mandar Maju. Bandung.

Syahmin, A.K. 1985, Pengantar Hukum Humaniter Internasional, Bagian Umum. Armico. Bandung.

Titahelu, 2006, Tanggung Jawab Komando Dalam Kejahatan Terhadap Kemanusiaan Menurut Undang-undang Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia, Tesis, Program Pascasarjana Universitas Sam Ratulangi, Manado.

Thontowi, J, 2002, Hukum Internasional di Indonesia, Dinamika dan Implementasi Dalam Beberapa Kasus Kemanusiaan, Madyan Press. Yogyakarta.

Van Dijk, 2001, Hukum Internasional tentang Hak Asasi Manusia, Dalam Peter Baehr, Pieter Van Dijk, Adnan Buyung Nasution dan Leo Zwaak (Penyunting) 2001, Instrumen Internasional Pokok Hak-hak asasi Manusia. Yayasan Obor Indonesia, Jakarta.

Wignjosoebroto, S. 2002. Hukum Paradigma, Metode dan Dinamika Masalahnya. ELSAM, Jakarta.

Yusniadi, A., Darma, M., Elyani, E., & Sitepu, K. (2024). Implementasi Sanksi Administrasi Terhadap Anggota Militer Yang Melanggar Aturan Disiplin Militer Berdasarkan Undang-Undang Nomor 25/2014 Tentang Hukum Disiplin Militer (Studi Di Kumdam I/Bb). Iuris Studia: Jurnal Kajian Hukum, 5(2), 504-518