

Juridical Review Indonesian National Army, Army Who Permitted The Crime of Adultery

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ABSTRACT

The aim is to find out the provisions governing the criminal act of violating adultery or immorality committed by the Indonesian National Armed Forces. This research uses the method The type of research in this study is normative juridical law research, namely research based on literature studies which includes primary legal materials and secondary legal materials. Legal Consequences Regarding the crime of violating decency/adultery committed by the Indonesian National Armed Forces, the perpetrator is subject to Article 281 paragraph (1) of the Criminal Code Juncto Article 26 of the Criminal Procedure Code, Article 190 paragraph (1), paragraph (3), paragraph (4) of the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice, namely in addition to the main punishment in the form of imprisonment, as well as additional punishment in the form of being dismissed from military service.

Keywords: Law, Criminal Code, Criminal, Constitution, TNI.

1. INTRODUCTION

Military criminal law is included in the special criminal law because the law specifically regulates crimes committed by members of the military. Special military criminal law is needed because military institutions have a very heavy duty in the state, namely to become a pillar for upholding state sovereignty so that it must be regulated in special laws so that the characteristics of military discipline are maintained so that they become institutions that are always ready if needed (Amu, 2012). Military criminal law in a broad sense includes the notion of military criminal law in the material sense and criminal law in the formal sense. Military criminal law in the material sense is a collection of criminal act regulations that contain orders and prohibitions to uphold law and order. If these orders and prohibitions are not obeyed, they are subject to criminal penalties. Formal criminal law, or better known as the procedural law of military justice, is tasked with defending material criminal law, which is a collection of legal regulations that contain provisions regarding judicial powers and procedures for examination, investigation, prosecution, and sentencing for military personnel who violate material criminal law (Supriyadi, 2008).

According to the Military Criminal Code, criminal acts are divided into two, namely:

- a. A pure crime (*Zuiver Militaire Delict*) is a crime that is only committed by a military man, because it is specifically military in nature (violating the KUHPM).



- b. Mixed crime, (Gemengde Militaire Delict) is a prohibited act which actually already has regulations, only those regulations are in other laws.

Adultery in general can be committed by anyone, both civil society and a member of the Indonesian National Armed Forces (TNI). A member of the military is taught to live in discipline and uphold ethics, but in essence military members are ordinary people who can make mistakes and oversights in holding back their passions. From a legal point of view, TNI members have the same position as ordinary members of society. This means that as a citizen for him also applies to all existing legal provisions. Both criminal law and Civil, Criminal Procedure, Civil Procedure (Sugiarto, 2021).

The difference lies only in the burden of obligations that are more than ordinary countries in matters related to national defense. Decision Number 74 K/Mil/2022, the case of adultery committed by Ms. Nurul Azizah knew the suspect around November 2012 and was introduced by Ms. Ellen (college level younger sister), alone at that time. Nurul Azizah was already dating Kopda Mar Muchammad ichsan, in January 2013. The suspect said he liked Ms. Nurul Azizah but could not propose because she was serving in Merauke, and in February 2013 Sdri. Nurul Azizah told the suspect that she was going to marry Kopda Mar Muchammad ichsan, then the suspect said that it was okay, then on May 31 2013 Ms. Nurul Azizah married Kopda Mar Muchammad Ikhsan; In November 2013 the suspect contacted Ms. Nurul Azizah via BBM (Blackberry Messenger) said that the suspect would marry if Ms. Nurul Azizah found it, then Ms. Nurul Azizah introduced her female friends but none of them matched, then Sdri. Nurul Azizah introduced herself in it Erawati (sister of a friend Ms. Nurul Azizah) to the suspect and they were compatible until they finally got married;

In August 2018 the suspect contacted Mr. Nurul Azizah, then make an appointment to meet at KFC Jl. Adityawarman Surabaya after that between the suspect and Ms. Nurul Azizah often communicates via WhatsApp application short messages, on Friday 29 November 2019 at around 15.00 WIB when Ms. Nurul Azizah is working at RSMuhammadiyah Ampel Surabaya, the suspect said that he would stop by to his house at Perum Graha Mutiara Indah Block D.1 No.7 Desa Mojosarirejo Kec. Driyorejo Kab. Gresik, around 17.00 WIB Ms. Nurul Azizah returned to her house when the house was empty because Kopda Mar Muchammad Ichsan was in Sukabumi while the first child was entrusted to her grandmother and the second child was entrusted to her nanny. Nurul Azizah and sat in the living room chatting, then the suspect hugged Ms. Nurul Azizah, kissing her cheek and lips, around 22.00 WIB Ms. Nurul Azizah and the suspect entered the room and sat on the edge of the bed because the suspect's lust had peaked, so the suspect took off his



pants and underwear and then the suspect uncovered Ms. Nurul Azizah and took off her underwear, then took the position of Ms. Nurul Azizah was below and the suspect inserted his genitals into the genitalsMs. Nurul Azizah after approximately 2 (two) minutes the suspect's genitals released semen in the genitalsMs. Nurul Azizah after that the suspect slept separately with Ms. Nurul Azizah, then on Saturday 30 November 2019 at around 04.00 WIB the suspect askedMs. Nurul Azizah had sex again but was rejected because Ms. Nurul Azizah did not want to and around 06.00 WIT the suspect left the house of Ms. Nurul Azizah;

On Friday, January 10 2020, around 23.00 WIS, Ms. Nurul Azizah and the suspect checked in at the Walisongo Hotel and then both entered the hotel room, because Ms. Nurul Azizah was already sleepy and they finally fell asleep, around 03.00 WIB Ms. Nurul Azizah woke up then played with her cellphone while the suspect woke up at around 05.00 WIB and played with his cellphone after that at around 06.00 WIB they checked out of the hotel, before leaving the hotel room. The suspect hugged Ms. Nurul Azizah with her hand and kissed Ms. Nurul Azizah after that they both returned to their respective homes.

On Saturday 29 February 2020 at around 3:00 p.m., the suspect and Ms. Nurul Azizah met at the Walisongo Hotel then traveled around Surabaya on a motorbike and drank coconut ice at the Kenjeran Beach area, at around 18.00 WIB they returned and immediately went into Walisongo's hotel room, then Ms. Nurul Azizah sat on the bed while the suspect went to the bathroom after that the suspect took off Ms. Nurul Azizah, then the suspect kissed her forehead and lips. Nurul Azizah, until finally the suspect took off Ms. Nurul Azizah and only wearing clothes and the suspect also took off his pants only wearing clothes, then Ms. Nurul Azizah was sleeping on the bed and the suspect immediately sat on top of her and tried to insert his genitals into Ms. Nurul Azizah, but after the suspect's genitals were attached to the genitalsMs. Nurul Azizah The suspect's semen had come out around Sdri's genitals. Nurul Azizah, After that on March 1 2020 at around 05.00 WIB the suspect invited Ms. Nurul Azizah to have intercourse again, initially Ms. Nurul Azizah refused, because the suspect insisted, finally Ms. Nurul Azizah complied with the suspect's wish, then the suspect kissed Ms. Nurul Azizah then leaned over and inserted her genitals into Sdri's genitals. Nurul Azizah went in and out for 2 (two) minutes. After that, the suspect released his semen inside Ms. Nurul Azizah and around 06.30 WIB they checked out of the hotel and returned to their respective homes.

On June 9, 2020 Mrs. Nella Ernawati sent a message to Kopda Mar Muchammadlkhsan through the Facebook application, which contains evidence of Mr. chat. Nurul Azizah with the suspect, then Kopda MarMuchammad lkhsan asked Sdri. Nurul Azizah about it and Sdri. Nurul



Azizah admit that had an affair with the suspect, then Kopda Mar Muchammadlkhsan reported the incident to Denpom V/4 Surabaya.

2. RESEARCH METHOD

The type of research in this study is normative juridical law research, namely research based on literature studies which include primary legal materials and secondary legal materials. Primary legal material is carried out by reviewing laws and regulations related to the legal issues being investigated and secondary legal materials in the form of books, journals and documents, as well as related studies related to predetermined titles. by the author. case approach, the legal approach is carried out by identifying and discussing the applicable laws and regulations, which are related to the problems in this study.

3. RESULTS AND DISCUSSION

The Indonesian National Armed Forces who committed the crime of adultery

Military crimes have almost the same meaning as criminal acts in general, which differentiates the subject where the subject is the military. Regarding criminal acts, the term is strafbaarfeit, the translation of which is a behavior that can in fact be punished, the categorization varies, some say it is an offense, a criminal act, a criminal act, finally a criminal act. Moeljatno defines strafbaar feit as an act that is prohibited and punishable by criminal law (Lamintang & Lamintang, 2022).

Military crimes are divided into two types, first pure military crimes (zuiver militaire delict) and mixed military crimes (gemengde militaire delict). Pure military crimes are synonymous with prohibited acts, usually prohibited by military regulations. The categorization of pure military crimes apart from its specific nature is also related to military interests. Examples of purely military crimes are the Crime of Desertion (Article 87 of the Criminal Code), the Crime of Insubordination (Articles 105 to 109 of the Criminal Code), leaving a guard post (Article 118 of the Criminal Code).

In contrast to pure military criminal offenses, mixed military criminal acts are prohibited actions or violations, basically the action has been determined by other laws, the act referred to is not just something positive, there is a negative nature or prohibited in essence there is something that should not be done, according to Simons to do it to something active, use the muscles and can cause the effect of the action, whereas according to the pompe of the muscle movement it cannot be (Siregar, 2022).

Mixed military crimes, in addition to having military characteristics, also contain other characteristics, usually the punishment becomes more severe, even more severe than the original situation.

Overall, both pure and mixed types of military crimes, all of them are divided into types of crimes in general, namely:

a. Crimes and Offenses

Crime is *rechtsdelicten*, an act that is determined in criminal law laws or that has not been determined in criminal law laws because it is considered contrary to the morals that exist in society and the legal system or *onrecht*, while violations are *wetsdelicten* which can be known when it has been set forth in statutory regulations.

b. Material Crimes and Formal Crimes

According to Soedarto, formal criminal acts are qualified as prohibited acts, while material criminal acts are focused on unwanted consequences.

c. Tindak Pidana Commission, Tindak Pidana Commission, dan Tindak Pidana Commission by omission

The commissionist crime is in the form of an act that violates the provisions of the law, the commissionist crime is associated with the crime of violating orders according to the law, finally the *Commissionis per omissionis* commission crime is in the form of an act that is prohibited by law but does it without doing anything.

d. Dolus and Culpa's Crimes

The dolus crime is usually done on purpose, in contrast to the culpa crime, which has no intention at all.

It is. Single and multiple crimes

A single crime is a crime that is committed for the first time where the action is only once, the perpetrator can be punished only once in committing an act prohibited by law. In contrast to multiple criminal acts, the act is committed several times, and the perpetrator can be punished according to certain criminal provisions because the perpetrator has committed several similar crimes as prohibited by law.

Elements of military crimes adopt the elements of criminal acts in general crimes. As stated in Article 1 of the Criminal Procedure Code: "To implement this Code, the provisions of the General Criminal Law apply, including Book 1 Chapter IX of the Criminal Code, unless there are deviations stipulated in this Law".



According to this article, it can be concluded that the general criminal law provisions also apply to the military, except for deviations in the Military Law, as the adage *lex specialis derogat legi generalis* (special provisions override general provisions), the Criminal Code as *lex generalis* and KUHPM as a *lex specialist*. In the Criminal Code and KUHPM regarding the elements divided into objective elements and subjective elements in it. The subjective element is identical with the perpetrator and everything that is in it is embedded deep in his heart, while the objective element is related to the state of the perpetrator when he committed the crime (Sulistiriyanto, 2011).

The subjective element consists of:

- a. Something is intentional and unintentional;
- b. Something intended;
- c. Various kinds of intent;
- d. Premeditated actions;
- e. Can be accounted for;
- f. Causing a feeling of fear when doing the deed.

While the objective element is a violation of the law, and the Quality of the perpetrator, and adjusts the formulation of the crime. Actions in the form of crimes can be categorized from elements in the form of doing or not doing something. The nature of unlawfulness is any act that fulfills the formulation of an offense as written in the Law on Military Criminal Law, so a person cannot be punished if it is not against the law (for example: soldiers of war rape their prisoners of war).

Military Court

Military courts are specialized courts, the legal basis for military courts is Law Number 14 of 1970 concerning Basic Provisions of Judicial Power which was renewed by Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 and Law Number 31 of 1997 concerning Military Courts (Budi Pramono, 2020).

The Military Court is the executor of judicial power within the armed forces to uphold law and justice by taking into account the interests of the implementation of state defense and security. In practice, military courts are administered by military courts, namely courts which are the executing bodies of judicial power within the armed forces. Courts in military justice consist of Military Courts, High Military Courts, Main Military Courts, and Combat Military Courts (Badu & Apripari, 2019).



Military courts are only specifically for members of the military and are equated with the military, with special military courts military members have a big responsibility in carrying out the duties and obligations that are applied in the military (Maulana & Nurhafifa, 2020).

In the event that a criminal act is committed by a member of the TNI, the Military Police are required to carry out investigative actions in accordance with the procedures and procedures stipulated in the Criminal Procedure Code (KUHP) and Law Number 31 of 1997.

The process of settling military criminal cases is divided into several stages which include the stages of investigation, prosecution, examination at the Military Court and ends with the execution process. The existence of these stages is also related to the division of tasks and functions of various institutions and law enforcement units within the TNI whose authority arrangements are as follows:

- a. The unit commander as Ankum and or Papera.
- b. Military Police as Investigators.
- c. Military Prosecutor as investigator, public prosecutor and executor.
- d. Military Judges at Military Courts who hear examine and decide on criminal cases committed by TNI Soldiers or those who are equated as TNI Soldiers according to law.

The process for resolving military criminal cases that occur within the TNI is almost the same as the settlement of general criminal cases, but what distinguishes it is the authorized officers and the stages involved. The levels of these stages are as follows:

1. Investigation level.
2. Prosecution rate.
3. Level of examination in court.
4. Decision rate.

The Legal Consequences of the Indonesian Army National Army Committing the Crime of Adultery/Decency (Case Study of Decision Number: 74 K/Mil/2022)

1.Position Case

That the Defendant was at the times and in the places mentioned below, namely on the twenty-ninth day of November 2000 nineteen, the eighth day of January the twentieth year 2000, the twenty-ninth day of February the twentieth year 2000 or at least sometime in November 2000 nineteen, January and February the twentieth year 2000, or at least sometime in 2000 nineteen and 2000 two thirty at the house of Ms. Nurul Azizah (Witness-2) at Graha Mutiara Indah Housing Block D 1 No. 07 Mojosari Driyorejo Gresik and at the Walisongo JI hotel. KH Mas Mansyur Surabaya, or at least in a place that belongs to the jurisdiction of the Military Court 111-12

Surabaya has committed a crime: "A man who took part in the crime, even though it is known that the person who is guilty is already married."

These actions are carried out in the following ways:

- a. That the Defendant entered the Indonesian Army Soldier in 2005 through Secata PK education at Rindam V/Brw, after graduating he was appointed with the rank of Prada, then was placed at Yonif 755/Yalet Merauke, then in 2018 the Defendant attended Secaba Reg education and graduated with the rank of Serda, then the Defendant was placed at Kodim 0832 South Surabaya until the time he committed the act that became this matter with the rank of Serda NRP 31050800590484;
- b. That the Defendant knew Mr. Nurul Azizah (Witness-2) in November 2012, after the introduction, the Defendant and Witness-2 often communicated via cellphone, and Witness-2 felt like the Defendant, but the feeling was that the Witnesses were buried because they already had a boyfriend, namely Kopda Mar Mochamad Ihsan (Witness-1), then in January 2013 the Defendant said he liked the Witness-2, and the Witness-2 told the Defendant that he was serious about coming and applying for Witness-2 but the Defendant could not come because of his duties at Mer auke, then in February 2013 Witness-2 told the Defendant that he would marry Witness-1, and the Defendant said "it's okay if you get married"
- c. Whereas on May 31 2013, Witness-1 married Witness-2 in Jombang through the Indonesian Navy and officially at the KUA, Tembelang District, Kab. Jombang, according to the quote from the Marriage Deed Number 0214/055/V/2013, dated May 31 2013 and the marriage was blessed with 2 (two) children, namely the first child named Muhammad Fathir Nuris Pratama aged 6 (six) years and the second named Janatus Saukia Arafah is 3 (three) years old, and after marriage she lives in Graha Housing Pearl Indah Blok D1 No. 07 Mojosarirejo Driyorejo Gresik;
- d. Whereas after marriage, Witness-2 sent wedding photos to the Defendant, then in June 2016 the Defendant contacted Witness-2 to meet and said that no matter what happened the Witness-2 could not change phone numbers, but Witness-2 did not comply with the Defendant's wishes;
- e. That the Defendant was married to Ms. Nella (Witness-7) on July 22 2016 at KUA Sukodono Kab. Sidoarjo, and in this marriage they were blessed with 2 (two) children, the first named Arshaka Adventure Abrasive age 17 (seventeen) months and the second Bernama scratch Kaindra Armitius 6 (six) months old, and the Defendant lives in Papua while the Witness-7



lives with his parents in the Telkom Lot RT.62 RW. 01 Ex.Reconciliation district Sukodono Kab. Sidoarjo;

- f. Whereas in September 2017 Witness-2 sent messages via whatsapp and sent photos of Witness-2's children and asked how the Defendant was doing, but the one who received the message was Witness-7 and said the Defendant was currently studying Secaba, then In June 2018 the Defendant contacted Witness-2 saying he would be moving assignments to Java and when he was in Java the Defendant would contact Witness-2, then in August 2018 the Defendant was conducting debriefing at Kodam V/Brw making an appointment with Witness-2, after meeting and eating together at KFC Jl. Adityawarman Surabaya, then the Defendant and the Witnesses often communicated, ate together and the Defendant once picked up the Witnesses when they came home from work, and when they were leaving the Defendant often kissed the Witnesses' foreheads;
- g. That on Friday, November 29 2019, at around 15.00 WIT, the Defendant contacted Witness-2 there was an activity in the Menganti Gresik area and was going to stop by Witness-2's house because it was close to Witness-2's house. 07 Mojosari Driyorejo Gresik and Kopda Mar Agus Susanto (Witness-4) saw the Defendant at Witness-2's house and at that time the Witness-2's husband, Witness-1, was having a family event in Sukabumi, West Java while the Witness-2's first child went with her grandmother and the second child, Witness-2, was entrusted to the nanny, then the Defendant parked his bicycle in the garage of the Witness-2's house, then the Witness-2 invited him into the house, then the Witness-2 and the Defendant chatted in the living room while the Defendant hugged, kissed the cheeks and lips of the Witnesses, then the Defendant went to the bathroom while the Witnesses went to the kitchen, after the Defendant came out of the bathroom, then the Defendant immediately hugged the Witnesses from behind while kissing the cheeks and lips of the Witnesses, then the Defendant invited the Witnesses to sit on the bed in the back room;
- h. That at around 22.00 WIB when the Witness-2 and the Defendant were sitting on the bed in the back room, the Defendant was very passionate, then the Defendant took off his uniform and underpants he was wearing, then the Defendant held up the skirt of the Witness-2 and took off the underwear of the Witness-2, then the Defendant inserted his tense penis into the vagina of the Witness-2 with the position of the Witness-2 below and the Defendant above, then the Defendant moved his buttocks back and forth and not for 2 (two) minutes the Defendant released sperm outside the genitals of the Witnesses, then the Defendant ordered the Witnesses to suck the Defendant's penis, then the Witnesses sucked the Defendant's penis

only briefly, then the Defendant went to the bathroom, then the Witnesses also went to the bathroom to clean themselves, then slept separately, the Witnesses slept in the front room while the Defendant slept in the back room;

- i. That on Wednesday 8 January 2020 at around 19.00 WIT the Defendant contacted Witness-2 to invite him to check in at a hotel close to the Muhammadiyah Hospital and the Witnesses answered that there was the Walisongo JI hotel. Carpentry in Surabaya behind the hospital and the Defendant asked Witness-2 to make a booking and check-in at the hotel, at around 21.00 WIB after returning from work the Witness-2 checked in to the hotel using Witness-2's KTP with a rental fee of Rp.
- j. That at around 22.00 WIT, Witness-2 entered the Walisongo hotel room on the second floor, number 239 JI. Carpentry Surabaya, then the Witness-2 watched television until he fell asleep, then the Defendant contacted Witness-2 to be picked up in front of the hotel, then the Witness-2 picked up the Defendant and entered the hotel room, after being in the hotel room because. The Witnesses were sleepy, then the Witnesses and the Defendant slept together on the bed, Saturday 9 January 2020 at around 03.00 WIB.
- k. That on Saturday 29 February 2020 the Defendant ordered the Witness-2 to check in and the Witness-2 said the hotel was full because the Defendant insisted, then at around 14.00 WIB Wib-2 made a booking and checked in at the Walisongo hotel, at around 15.00 WIB Wib-2 went home from work, the Defendant met Witness-2, then the Defendant's official motorcycle was deposited at the Muhammadiyah Ampel Hospital, then Witness-2 and the Defendant rode a motorbike, Witness-2 went for a walk around Surabaya, and drink ice with the Kenjeran beach area of Surabaya, then head to the Walisongo hotel;
- l. That at around 18.00 WIT Witness-2 and the Defendant entered the Walisongo hotel room no. 240 second floor, after being in the room the Witness-2 sat on the bed, while the Defendant went to the bathroom, after the Defendant came from the bathroom, then the Defendant took off Witness-2's headscarf and kissed the forehead and lips of Section-2, then the Defendant took off Witness-2's underwear until the Witness-2 was naked only wearing clothes, then the Defendant took off his pants and only wore clothes, then slept on the bed, then the Defendant tried to insert his penis which was already tense into the vagina of Witness-2, but after the Defendant's penis stuck and had no time for the penis The Defendant entered the Witness-2's vagina, the Defendant had secreted sperm around the Witness-2's genitals, after that the Witnesses talked with the Defendant and around 20.00 WIB left the hotel and ate together at JI. Demak Surabaya;



- m. That then at around 22.00 WIB the Witness-2 and the Defendant entered the Walisongo hotel room, and on Sunday 30 February 2020 at around 05.00 WIB the Defendant invited the Witness-2 to have intercourse, but the Witness-2 refused but the Defendant insisted and said only once, then the Defendant took off the pants of the Witness-2, then the Defendant also took off his pants so that both of them were only wearing clothes, then the Defendant kissed the forehead and lips of the Witness-2, then the Defendant inserting his tense penis into the vagina of Witness-2 with the position of Witness-2 below and the Defendant on top, then the Defendant moved his buttocks back and forth for about 2 (two) minutes The Defendant released sperm inside the genitals of Witness-2, at around 06.30 WIB Wib-2 with the Defendant checking out of the hotel and returning to their respective homes;
- n. That the condition or condition of room no. 240 second floor at Walisongo JI hotel. KH Mas Mansyur Surabaya room only has one bed, doors and windows are closed;
- o. That on Thursday, July 2 2020, at around 13.30 WIT, Witness-8 ordered members of Infantry Battalion 1 to Mar, namely Sergeant Mar Dwi Aji Prasetyo, Koptu Mar Lingga Munarso together with Witness-1 to check at the reception office of the Walisongo Syariah Hotel, and at the Walisongo Syariah hotel in the hotel guest book records from 8 to 9 January 2020 the name Nurul was written in room No. 239 and from 29 February 2020 to 1 March 2020 the name Ci Nurul was written in room No. 240, then Witness-8 ordered an Intel Yonif 1 Mar staff member to accompany Witness-1 to make a complaint, then on July 20, 2020 Witness-1 reported the Defendant's actions to Denpom V/4 to be processed according to applicable law.

2. Military Prosecutor's Charges

That the Defendant's actions have fulfilled the elements of a criminal act as formulated and threatened with a crime listed in:

First: Article 281 1 of the Criminal Code

Second: Article 284 paragraph (1) 2a of the Criminal Code

3. Evidence:

In the form of letters:

- a. 2 (two) photocopies of the Marriage Act a.n. Muhammad ihsan with Sdri. Nurul Azizah No. 0214/055/V/2013 dated 31 May 2013 issued by KUA Kee's office. Tembalang District Unmarried;
- b. 4 (four) sheets of print outs of Nayla Denizar's whatsapp conversations;
- c. 2 (two) sheets of printed out guest list of Hotel Syariah Walisongo;
- d. 9 (nine) sheets of print outs of whatsapp conversations "Abang Hp" November 29 2019 to November 30 2019 and list of Koramil pickets 0832 Tegalsari;



It is. 3 (three) photos of the Walisongo hotel and hotel rooms in Surabaya;

f.1 (one) photo of the Bambe Driyorejo Gresik gas station; And

g. 7 (seven) photos of Kopda Mar Muhammad ihsan's house and room at Perum Graha Mutiara Indah Block D1No. 7 A Mojosarirejo Driyorejo Gresik.

4. Decision Number 95-K /PM.III-12/AD/V/2021

In view of Article 284 paragraph (1) 2nd letter a of the Criminal Code Juncto Article 26 of the Military Criminal Code Juncto Article 190 paragraph (1), paragraph (2) of the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts and other relevant statutory provisions, then

1. Declare the Defendants mentioned above namely: Dwi Bagus Santoso, Rank Serda NRP 31050800590484; proven legally and convincingly guilty of committing a crime in the second alternative indictment: "Participating in committing adultery".

2. Convict the Defendant therefore with

a. Principal Crime: Imprisonment for (eight) months.

b. Additional Criminal: Dismissed from military service.

3. Establish evidence in the form of letters:

a. 2 (two) photocopies of the Marriage Act a.n. Muhammad ihsan with Sdri Nurul Azizah No. 0214/0554//2013 dated May 31, 2013 issued by the KUA office of Tembelang Subdistrict, Jombang District

b. 4 (four) sheets of print outs of Nayla Denizar's whatsapp conversations;

c. 2 (two) sheets of printed out guest list of Hotel Syariah Walisongo;

d. 9 (nine) sheets of print out printouts of Abang Hp's WhatsApp conversations from 29 November 2019 to 30 November 2019 and list of pickets for the Koramil 0832 Tegalsari;

It is. 3 (three) photos of the Walisongo hotel and hotel rooms in Surabaya;

f. 1 (one) photo of the Bambe Driyorejo Gresik gas station; And

g. 7 (seven) photos of Kopda Mar Muhammad ihsan's house and room at Perum Graha Mutiara Indah Block D 1 No. 7 A Mojosarirejo Driyorejo Gresik.

4. It remains attached to the case file and charges the defendant a fee of Rp. 10,000.00 (ten thousand rupiah).

5. Ordered the Defendant to be detained.

5. Decision Number 71-K/PMT II/BDG/AD/X1/2021



Sentence against Defendant Dwi Bagus Santoso Rank Serda NRP 31050800590484, the Panel of Judges at the Appellate Level is of the opinion that the Court of First Instance Decision as far as proving the elements of the crime is correct and correct, it must be upheld.

Whereas regarding the sentence imposed by the Court of First Instance, namely the principal sentence in the form of imprisonment for 8 (eight) months and the additional sentence of dismissal from military service handed down by the Panel of Judges of First Instance, the Panel of Judges of Appeal Level is of the opinion that it is appropriate and correct and reasonable enough, but it is necessary to add other considerations to the circumstances surrounding the Defendant as follows:

1. That every soldier who adheres to the Sapta Marga, Soldier Oath and 8 (Eight) Compulsory TNI must always guide, obey and implement all applicable legal rules and regulations, in every step and action, in addition to that they must understand what is permissible and what cannot be done and behave and behave in a commendable manner by avoiding any actions or behaviors that could damage the image of the TNI in the eyes of society.
2. That the Defendant's intercourse does not need to occur if the Defendant's soul is implanted to maintain the dignity and purity of marriage with his lawful wife, Ms. Nella Ernawati, who has been married since July 22 2016 at the KUA Sukodono Sidoarjo, East Java, not to have intercourse with women who are not bound by a legal marriage.
3. That as a result of the Defendant's sexual intercourse with Ms. Nurul Azizah, the household Mr Mochammad Ikhsan and Sister Nurul Azizah became disharmonious on the verge of splitting (divorce).

The verdict of the Panel of Judges at the appellate level is as follows:

1. Declared that he had formally accepted the appeal filed by the Defendant Dwi Bagus Santoso, Serda NRP 31050800590484.
2. Strengthening the Decision of the Military Court 111-12 Surabaya Number 95-K/PM.111-12/ADN/2021 dated 27 October 2021, in its entirety.
3. Charge case costs at the appeal level to the Defendant in the amount of Rp. 15,000.00 (fifteen thousand rupiahs).
4. Ordered the Defendant to remain in detention.
5. Ordered the Registrar to send a copy of this decision along with the case file to the Military Court 111-12 Surabaya.
6. Decision Number 74 K/Mil/2022



The reasons for the cassation filed by the Cassation Appellant/Defendant, the Supreme Court is of the opinion as follows:

The reasons for cassation by the Cassation Petitioner/Defendant Legal Counsel and the Defendant's cassation reasons cannot be justified, because *judex facti* in *casu* High Military Court III Surabaya in trying the case the Defendant was not wrong in applying the law, with the following considerations:

Whereas the *judex facti* decision of the High Military Court III Surabaya which upheld the decision of the Military Court II-12 Surabaya in *casu* on the proven indictment of the Military Auditor Article 284 Paragraph (1) 2nd letter a of the Criminal Code and the sentence of imprisonment for 8 (eight) months and additional punishment of dismissal from military service was correct and correct, because in making its decision the *judex facti* had provided legal and correct legal considerations in accordance with the facts of the trial (Fadhly, 2014);

Whereas the cassation reason for the Cassation Appellant/Defendant for the decision/*judex facti* in *casu*, on the grounds that *judex facti* had been wrong in applying the law in trying the Defendant in *casu* case, was based on the facts of the trial that based on the available evidence, the Defendant on 29 and 30 November 2019 as charged with the Defendant in *casu* never came and never stayed at the house of Witness-2 Nurul Azizah, because the Defendant was carrying out his duty of securing the visit of the Vice President and carrying out activities TNI-Polri Synergy Joint Patrol and on 29 February 2020.

The Defendant was carrying out internal service duties at Kodim 0832/SS, therefore he requests to cancel the *judex facti* in *casu* decision and acquit the Defendant from all charges of the Military Prosecutor. Whereas the reason for the cassation of the Defendant requesting the lightest possible sentence is because the Defendant is the backbone of the family and still has 2 (two) toddlers who still need living expenses.

The reasons for cassation from the Cassation Appellant/Defender's Legal Counsel and the Defendant's cassation reasons cannot be justified because they are only a repetition of what has previously been submitted at a *judex facti* examination and are related to respect for a fact, and this right has been considered sufficiently by the *judex facti* in its decision. Thus there is nothing new in the cassation that can cancel or change the *judex facti* in *casu* decision. Therefore such matters cannot be considered at the cassation level examination;

Whereas the reasons for *judex facti* supporting the decision of the Surabaya Military Court 111-12 in *casu*, were correct and correct in its legal considerations because in making the in *casu* decision the facts at trial were carefully considered. Likewise, in the case of imposing a *judex facti*

sentence, careful consideration has also been given to the legal aspects of sentencing, namely aspects of justice, legal certainty and aspects of the benefits of the a quo sentence for the accused and society;

Whereas the contra memory of cassation from the Military Pltu, which principally requests to reject the cassation request from the Cassation Petitioner/Defender's Legal Counsel and strengthen the judex facti decision, can be considered because the reasons and arguments are in line with the legal considerations in the judex facti in casu decision;

Based on these considerations and it turns out that the judex facti decisions in this case do not conflict with the law and/or statutes, the application for cassation is declared rejected;

Considering whereas because the Defendant was convicted, he was burdened to pay court fees at the cassation level;

In view of Article 284 Paragraph (1) 2nd letter a of the Criminal Code juncto Article 26 of the Criminal Procedure Code, Law Number 48 of 2009 concerning Judicial Powers, and Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the Second Amendment by Law Number 3 of 2009 and other relevant laws and regulations;

The decision of the Panel of Judges at the Cassation level is as follows:

Rejecting the cassation request from the Appellant/Defendant DWI BAGUS SANTOSO, Serda NRP 31050800590484;

Burden the Defendant to pay court costs at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah);

4. CONCLUSION

The provisions governing the criminal act of violating adultery committed by the Indonesian National Armed Forces have almost the same meaning as criminal acts in general, which distinguishes the subject where the subject is the military. Regarding the forms and types of crimes of decency that are formulated in CHAPTER XIV of the Criminal Code regarding crimes of decency. In relation to the delict of decency itself, such as articles 281, 282, 283. The legal consequences of the criminal act of violating decency/adultery committed by the Indonesian National Armed Forces, the perpetrator is subject to Article 281 paragraph (1) of the Criminal Code Juncto Article 26 of the Criminal Procedure Code, Article 190 paragraph (1), paragraph (3), paragraph (4) of the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice, namely in addition to the main punishment in the form of imprisonment, also additional punishment in the form of dismissal from military service.

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