



## Criminological Analysis of LGBT Acts Committed by Unscrupulous Soldiers

Anwar Saadi<sup>1</sup>, Sugianto<sup>2</sup>, Usman<sup>3</sup>

<sup>1-3</sup>IAIN Syekh Nurjati Cirebon, West Java, Indonesia

**Abstract.** Today, there is a phenomenon of deviation in the behavior of social life of the community known as Lesbian, Gay, Bisexual, and Transgender (LGBT). It is strongly felt that the pattern of life in the LGBT phenomenon is a deviation from the social norms, religion, and ideology of Pancasila. From the aspect of positive law, no law can be applied to punish perpetrators of LGBT acts. What comes to the surface is precisely the pros and cons of the perspective on LGBT acts, whether they are included in the issue of violations of the law, are part of human rights, or deviations of social behavior, or just deviations of sexual orientation. Pro-LGBT groups stated that there should be no discrimination against LGBT groups, whether men, women, transgender, opposite-sex lovers, or same-sex lovers, because it is considered a human right. For the contra group to have a criminological point of view that LGBT acts are violations of the law, not part of human rights aspects, LGBT is a violation of standard norms of life, contrary to morals and ethics, is a sin according to religion, and is a threat to the cultural and ideological values of a nation. LGBT acts also occur by TNI soldiers. Lawmakers must be able to formulate the rule of law in providing guarantees of certainty, justice, and benefit for the Indonesian people in overcoming LGBT developments that are a threat to the life of the Indonesian nation. LGBT perpetrators of TNI Soldiers must be given strict sanctions because these actions are contrary to the code of ethics of TNI Sapta Marga Soldiers and the Soldier's Oath.

**Keywords:** Criminological, LGBT, Soldiers, TNI, Pancasila

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## INTRODUCTION

The phenomenon of deviations in LGBT social behavior is also rife among TNI Soldiers. In the context of law enforcement within the TNI, against TNI Soldiers who commit unlawful acts, there are military law provisions that strictly regulate any actions that constitute violations, crimes, or prohibitions that are given threats in the form of criminal sanctions, disciplinary punishments, and administrative sanctions against the perpetrators of soldiers.

On the other hand, regarding LGBT acts, in particular, there is no regulation in criminal legislation. There is a criminal provision indirectly related to LGBT acts as formulated in Article 292 of the Criminal Code, that "a person who commits lewd acts with another person of the same sex, whom he knows or should reasonably suspect to be an adult, shall be punished with imprisonment for a maximum of five years." In the formulation of Article 292 of the Criminal

Code, there is a phrase criminal element "immature." This then makes it difficult for law enforcers at both the investigator and prosecutor levels to apply Article 292 of the Criminal Code as an LGBT offense because the formulation of the article explains that LGBT acts can only be punished if the spouse of the perpetrator is not yet an adult in criminal law.

In the context of military law enforcement within the TNI, LGBT TNI Soldiers are subjected to legal proceedings through Military Courts. This is based on the consideration that LGBT acts are hazardous because they have the impact of damaging the identity of the TNI as a professional army, which by Law Number 34 of 2004 concerning the TNI regulates that the TNI acts as a means of state defense. The TNI, as the main component in the country's defense system, is required to be highly disciplined, subject to the law, and uphold military discipline. This is as demanded by the TNI, which serves as the main component of deterrence against any military threats and armed threats from outside and within the country that threaten the sovereignty, territorial integrity, and safety of the nation; crack down on any form of threat; and restoration of the state security conditions disturbed by security chaos.

## DISCUSSION

### **Background to the Rise of LGBT Among TNI Soldiers**

TNI soldiers are Indonesian citizens with Pancasila joints, as a unique community that by law is recruited, trained, educated, and armed and given the task as a means of state defense, enforcer of the sovereignty of the Indonesian nation, guardian of the integrity of Indonesian territory, and as a protector of the safety of the Indonesian nation. The lives of TNI soldiers in the community are influenced by environmental factors, both externally and internally. When grouped from the aspect of life behavior, there are indications of two possibilities for a TNI Soldier to suffer from LGBT sexual behavior.

It could have happened from the beginning of the TNI entrance selection test, where the selectors did not explore more deeply the deviation of sexual behavior from the prospective TNI Soldiers. This means that from the beginning, before becoming a TNI soldier, the person concerned has indeed had gay genetics or lesbian genes in him. Other things could have happened because of the influence of association within the TNI that made him like that. This condition then affects a Soldier to commit LGBT acts; it can also be because he has seen other people who do then there is an interest so that they follow the group, or also as a result of the influence of films, images, and various shows that are currently very easily accessible through the development of information technology.

Not everyone has the same sexual orientation. This is the factor that influences the occurrence of LGBT, from the aspect of a person's mental health, if there is a sexual orientation disorder as in the form of LGBT, generally in the form of emotional, romantic, and affectionate attraction to other humans. According to the APA (American Psychological Association), sexual orientation cannot be chosen by humans. To facilitate understanding, briefly, there are three categories of sexual orientation in a person: Heterosexual, namely people attracted to the opposite sex; Homosexual, namely people who are attracted to the same sex; and Bisexual, which is people who are attracted to others and the opposite sex.

Sexual orientation is very different from sexual behavior, where orientation means feelings rather than deeds. A person may live contrary to his sexual orientation—for example, a man who is married and has children but is homosexual. Everyone's sexual orientation is different, and it is still unknown precisely what causes these differences. Some factors that are considered to be the cause that most influence a person to become LGBT, namely Genetics, where there are imbalanced hormones in the body that trigger it. Because a person's sexual orientation instinct will develop before puberty or before a person experiences sexual experience.

Another factor is the environment in which some homosexuals or bisexuals admit that association influences them to have such a sexual orientation. In addition, the condition of families or parents who often fight, divorce, or domestic violence also plays a role as an external cause of LGBT. Another influence is the presence of traumatic experiences. The existence of past bad experiences that continue to stick in the heart and cause trauma can also be the cause—for example, sexual harassment or violence experienced by someone. In principle, such sexual orientation abnormalities can be changed. There must be continuous and continuous efforts as much as possible to get back on the right path.

Some of the impacts caused by LGBT include health impacts, where there is an increase in homosexual perpetrators who contract sexually transmitted diseases and end up dying. Another thing is the social impact in the form of increasingly widespread LGBT behavior transmitted to other communities. The core condition has a further impact in the form of increasing social problems, increasing unemployment, and increasing number of law violations such as decency, drug crimes, and other violations of law caused by changes in people's harmful lifestyles. The evil influence of LGBT must undoubtedly be prevented with maximum efforts so that it does not spread widely in the scope of life of TNI Soldiers, which makes the TNI unprofessional in carrying out its essential duties.

## **Legal Proceedings Against TNI Soldiers Who Commit LGBT Acts**

It is realized that in Indonesia, there has been a legal vacuum, and there is a need for a law that regulates the criminal aspects of LGBT acts. There is still a polemic that LGBT perpetrators should be subject to criminal sanctions. Regarding criminalization or the threat of imprisonment and criminal sanctions against LGBT perpetrators, at least two criteria must be based, namely (1) LGBT acts endanger individuals, society, and even the life and ideology of the Indonesian nation, and (2) LGBT acts are immoral in the norms and customary laws of Indonesian society. LGBT can be classified on the immoral criterion of obscene acts. However, from the aspect of criminal law, one must be able to take into account the evidence, precise definitions, and how to enforce criminal law against LGBT obscene acts. In addition, from the aspect of criminal elements, it must also be able to clarify other legal means that can provide better results in describing the formal and material aspects of LGBT acts in line with the views of social and moral norms in Indonesian society.

LGBT acts are a perversion of human nature and nature. God Almighty created human beings in two types to pair: male and female. This legal conception is also regulated in Law Number 1 of 1974 concerning Marriage. Article 1 of this law states that marriage is only between a man and a woman. Therefore, same-sex marriage is contrary to Indonesian law. LGBT acts cannot take refuge behind human rights. Human rights should be subject to restrictions set by other laws, as stipulated in Law Number 1 of 1974 concerning Marriage.

Law enforcement against TNI Soldiers who commit LGBT acts is regulated under the provisions of military law. Military law is all national legislation whose subject matter is a military member or a person equated as a military under applicable legislation. All laws and regulations used as the basis for implementing TNI duties in carrying out state defense functions are categorized as military law. Military law must achieve legal unity, certainty, and codification. Therefore, it needs to be fostered and developed by departments that carry out government functions in national defense.

It is undeniable that within the TNI, there are also TNI individuals who commit LGBT acts as a result of environmental influences and the rise of LGBT culture, which is easily accessible from the rapid development of information technology or due to the influence of other social environments. Law Number 34 of 2004 concerning the TNI regulates the code of ethics for TNI Soldiers. Article 38 states that Soldiers, in carrying out their duties and obligations, are guided by the Soldier Code of Ethics and Officer Code of Ethics. The Soldier Code of Conduct includes the Sapta Marga and the Eight Mandatory TNI, while the Officer Code of Ethics is

Budhi Bhakti Wira Utama. Likewise, every soldier must be subject to the provisions of the Military Discipline Law. TNI soldiers require high discipline as an absolute requirement in military life to carry out duties and obligations properly, so military discipline laws need to be fostered and developed to benefit the implementation of national defense.

Law Number 25 of 2014 concerning Military Discipline Law stipulates that the essence of Military Discipline Law is internal guidance and regulation related to Military Discipline. Implementing the Military Discipline Law aims to realize organizational development, personnel coaching, coaching and improving military discipline, and enforcing the Military Discipline Law with attention to expediency and justice. Implementing the Military Discipline Law serves as a means to create legal certainty and protection for the military, prevent abuse of Annum authority, and enforce the order of life for every military member in fulfilling their duties and obligations.

Article 7 of Law Number 25 of 2014 expressly stipulates that every military, in carrying out its duties and obligations, must behave in a disciplined manner in compliance with the Military Discipline Law. The Military Discipline Law consists of obligations and prohibitions further regulated in the Commander-in-Chief Regulation. Furthermore, Article 12 stipulates that Military Discipline who are sentenced to Military Discipline more than 3 (three) times in the same rank and in the judgment of the authorized official not fit to be retained in military service are discharged honorably.

Likewise, in Law Number 34 of 2004 concerning the TNI, Article 62 stipulates that Soldiers are dishonorably discharged because they have habits and actions that can harm the discipline of soldiers or the TNI. The provisions regarding dishonorable dismissal are further regulated by Government Regulations as outlined in Government Regulation 39 of 2010 concerning the Administration of TNI Soldiers.

Article 53 of the Government Regulation stipulates that Soldiers are dishonorably discharged from the Military Service because (1) they are sentenced to additional criminal dismissal from military service based on a court decision that has obtained permanent legal force, or (2) they have habits and actions that can manifestly harm the discipline of the army or TNI. One form of character and action that can harm the discipline of the Soldier or TNI includes other actions that are inappropriate for a Soldier and contrary to service orders or service regulations or actions that are not by the norms of life of Soldiers, which in the consideration of authorized officials cannot be maintained to remain in the Military Service.

From the description above, it can be understood that LGBT acts committed by TNI soldiers are violations; not only are these acts immoral, but they are contrary to human nature and

Indonesian national law. Moreover, LGBT acts are a violation of the Soldier's code of conduct and the provisions of military law. LGBT acts are a form of character or actions that are detrimental to the discipline of the army or TNI, contrary to service orders or service regulations, not by the norms of life of the Soldier so that according to the consideration of the authorized officials the perpetrators cannot be maintained to remain in the military service and must be dishonorably discharged.

There are several LGBT cases committed by TNI soldiers prosecuted through Military Courts. The Military Court is one of the administrators of judicial power under the Supreme Court of the Republic of Indonesia. This is based on Article 24, paragraph 2 of the Constitution of the Republic of Indonesia Year 1945, that judicial power is exercised by a Supreme Court and judicial bodies located in the general judicial environment, religious court environment, military court environment, State administrative court environment, and by a Constitutional Court.

Related to LGBT cases heard in Military Courts are homosexual or sexual orientation cases committed by the same sex, namely between men and men, with the following charges:

1. Article 281 to -1 of the KUHP which reads "Anyone willfully and openly violates decency".
2. Article 294 paragraph (2) to -1 of the Criminal Code which reads "An official who commits lewd acts with a person under his command or with a person entrusted or handed over to him for safekeeping".
3. Article 103 paragraph (1) of the KUHPM which reads "Military that refuses or deliberately disobeys a service order or arbitrarily exceeds such an order".
4. Article 36 of Law Number 44 of 2008 concerning Pornography which reads "Any person who shows himself or others in performances or in public that depicts nudity, sexual exploitation, intercourse, or pornographic content".
5. Article 32 Jo Article 6 of RI Law Number 44 of 2008 concerning Pornography which reads "Everyone who listens, shows, utilizes, possesses, or stores pornographic products".
6. Article 45 paragraph (1) Jo Article 27 paragraph (1) of Law of the Republic of Indonesia No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning ITE which reads "Everyone intentionally and without rights distributes and or transmits and / or makes accessible electronic information and / or electronic documents that have the content of violating decency".

In the LGBT matter, the Military Oditur charged against the Defendant with the indictment compiled in an alternative indictment. Further, the Council of Judges, in its consideration, has proved which elements are appropriate to the facts in the trial by presenting considerations as the basis of the Judge's Assembly, as the basis for consideration of the fall of felonies both in the form of principal felonies and additional felonies against the Defendant.

Several LGBT cases that have been heard in the Military Court by applying alternative charges include the case at the Military Court II-08 Jakarta Number 212-K / PM II08AD / XI / 2020 with the Decision of the High Military Court II Jakarta Number 87-K / BDG / PMT-II / AD / XII / 2020. The consideration of the Decision of the Panel of Judges of the First Instance in proving the charges valid and convincing looks different from the considerations proved by the Panel of Judges of the High Military Court regarding the proof of elements with considerations such as LGBT criminal cases with Decision Number 212-K / PM II-08AD / XI / 2020 where the charges of the Prosecutor were prepared alternatively, namely:

- First Alternative: Article 294 paragraph (2) to -1 of the Criminal Code which reads: "An official who commits lewd acts with a person under his command or with a person entrusted or handed over to him for safekeeping".
- Second Alternative: Article 281 paragraph (2) of the Criminal Code which reads: "Whoever intentionally and openly violates decency".
- Third Alternative: Article 103 paragraph (1) of the KUHPM which reads: "Military that refuses or deliberately disobeys a service order or arbitrarily exceeds such an order".

The TNI Commander has issued a Telegram Letter of the TNI Commander Number ST Number 1313 / VIII / 2009 concerning the prohibition for TNI soldiers to commit LGBT acts, and further strengthened by Kasad Telegram Number 2497 dated December 28, 2012, is an order for TNI Army soldiers not to commit LGBT acts. However, ST Panglima TNI and ST Kasad cannot be used as bases for punishing and imposing a crime on a member of the TNI. The Telegram letter is considered in providing criminal punishment and whether or not a TNI soldier should be retained in military service.

Furthermore, the Supreme Court has issued Sema Number 10 of 2020 concerning the enactment of the Formulation of the Results of the Plenary Meeting of the Court Chamber in 2020 as a guideline for the implementation of duties for the Court in the formulation of the military chamber, namely concerning the application of the law against TNI soldiers Homosexual/Lesbian Perpetrators against violations of ST TNI Commander Number 398/2009

dated July 22, 2009, Juncto ST TNI Commander Number ST/1648/2019 dated October 22, 2019 which regulates the prohibition for TNI soldiers carrying out immoral conversations of the same sex (Homosexual / Lesbian) applies the provisions of Article 103 paragraph (1) of the KUHPM as an act of violating official orders.

What is meant by a service order is the depiction of a will, both orally and in writing, conveyed by a superior to his subordinates related to the interests of military service that a service order must meet the requirements (SITUMORANG, 2022). With the emphasis on LGBT immoral acts committed by TNI soldiers both about ST TNI Commander Number 1313 / VIII / 2009 concerning the prohibition for TNI Soldiers to commit LGBT acts, but of course, ST Panglima and ST Kasad cannot be used as a basis for punishing and imposing a crime for a member of the TNI because the ST is only a consideration in his criminal punishment or whether the defendant is retained in service military.

Meanwhile, implementing Article 103 of the KUHPM as a plenary meeting of the Supreme Court can only be applied in collaboration with others. Therefore, the Panel of Military Judges who hear LGBT cases committed by TNI soldiers charged with Article 281 of the Criminal Code, Article 294 paragraph (2) to 1 of the Criminal Code, and Article 103 of the KUHPM in considering which element is most by the facts of the trial must be very careful in considering the article as consideration later in the criminal conviction.

In the legal process of LGBT cases through the Military Court, the Panel of Judges will consider proving which element is most important by the facts of the trial. It needs to be understood that LGBT acts themselves are prohibited from being done by TNI soldiers so that the perpetrators will be subject to strict sanctions in the form of imprisonment and additional crimes in the form of dismissal from military service. The additional crime of dismissal from military service imposed in the Military Court is carried out by considering whether or not the Defendant is eligible to be retained as a TNI Soldier, must be seen from the quality of the crime committed and its effect both for the Unit in fostering the discipline of Soldiers in the Unit and for the community. In addition to the measure of ineligibility, the Panel of Judges thinks that dismissal must also pay attention to the purpose of the sentence, then in imposing the conviction, must pay attention to the objective circumstances of the criminal act committed by the Defendant so that the preventive and educational purpose of punishment that meets the sense of justice can be achieved.

## **CONCLUSION**

Based on the description above, it can be concluded that radicalism is still a global threat to the Review of criminological aspects in the military legal system that LGBT acts are immoral acts contrary to human nature and Indonesian national law, violate the Soldier Code of Ethics and Military Law, are a form of character and actions that can harm the discipline of the army or TNI, contrary to service orders or service regulations, not by the norms of life of Soldiers so that according to the judgment of authorized officials for the perpetrators must be dishonorably discharged.

In the military law enforcement system, several legal rules are applied as the basis for legal proceedings against TNI soldiers who commit LGBT acts, ranging from the Chief of Staff of the Force's Telegram Letter, the TNI Commander's Telegram Letter, the Circular of the Chief of the Supreme Court, Government Regulations on the Administration of TNI Soldiers to several laws. The legal process of LGBT cases in Military Courts must apply criminal articles with alternative charges related to the criminal act of decency, pornography, and Article 103 of the KUHPM to be able to prove and consider the formal/material elements that are by the facts of the trial, primarily related to the imposition of additional criminal sanctions of dismissal.

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