

# **CONSIDERATION OF MILITARY COURT JUDGE I MEDAN IN IMPOSING CRIMINAL AGAINST TNI AD SERVANTS WHO COMPLETE CRIMINAL ACTS OF HOMOSEXUAL DECENCY (Study of Decision Number 130-K/PM.I-02/AD/XII/2019)**

**<sup>1</sup>Widia Ningsih, <sup>2</sup>Prof. Dr. Ismansyah, <sup>3</sup>Dr. Fadillah Sabri**

<sup>1</sup>Master Of Law Student, <sup>2</sup>Master Of Law Lecture, <sup>3</sup>Master Of Law Lecture  
Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia  
Email – wn.widia45@gmail.com

**Abstract:** The judge's consideration is a basis for the decision that will be decided by the judge and it contains the judge's reasons as a form of accountability to the community related to the decision taken. In decision Number 130-K/PM.I-02/AD/XII/2019 the defendant received threats from witnesses to commit homosexuality, the defendant was sentenced to 5 months and 10 days in prison and dismissed from military service. According to Article 48 of the Criminal Code, a person who receives a threat cannot be punished.

**Key Words:** Judge's Consideration, Criminal Imposition, Moral Crime, Homosexuality, Indonesian National Armed Forces.

## **1. INTRODUCTION:**

From the results of the evidence carried out by the Military Prosecutor in front of the trial that the defendant's statement of coercion led to the defendant being in accordance with Article 48. Cannot escape the order of witness-2 who is the senior of the defendant and is accompanied by threats by witness-2. However, in the decision of the Medan Military Court I Number 130-K/PM.I-02/AD/XII/2019 the judge declared the defendant guilty of violating Article 281 of the 1st Criminal Code, namely "deliberately and openly violating decency". The defendant was sentenced to 5 (five) months and 10 (ten) days in prison, stipulating that the period during which the defendant was in temporary detention was deducted entirely from the sentence imposed and the additional sentence was dismissed from military service.

## **2. THEORITICAL FRAMEWORK:**

### a. Theory of Evidence

According to Martiman Prodjohamidjojo, proof contains the intention and effort to state the truth of an event, so that it can be accepted by reason for the truth of the event.[1]

### b. Theory of Criminal and Sentencing

According to PAF Lamintang, the crime is actually only a suffering or a mere tool, meaning that the punishment is not a goal and cannot have a purpose.[2]

### c. Theory of Legal Objectives (Usefulness, Legal certainty, and Justice)

Gustav Radburch gives an opinion on the purpose of law is justice, expediency and legal certainty.[3]

## **3. LITERATURE REVIEW:**

According to Moeljatno, a criminal act is an act that is prohibited by a rule of law, which prohibition is accompanied by threats (sanctions) in the form of certain crimes, for anyone who violates these rules.[4]

A judge's consideration must be addressed carefully, clearly, and thoroughly.

According to Supandriyo, explaining that a crime is a reaction or offense in the form of a misery of suffering that is deliberately given by the state to the perpetrator of the offense.[5]

The Military Court is one of several courts under the Supreme Court. Every case involving members of the TNI, will be decided by a judge who has knowledge and good conscience in the Military Court.

#### **4. METHOD:**

The method used in this study is a normative juridical approach, which is an approach that is focused on studying and researching legal material with reference to legal norms contained in laws and regulations, court decisions and legal norms that exist in society.[6]

#### **5. DISCUSSION:**

Homosexual deviant acts are contrary to religious norms, moral norms, legal norms, contrary to the values of the 5th Sapta Marga (Indonesian National Army Soldiers uphold discipline, are obedient and obedient to their leaders and uphold the attitude and honor of soldiers) , 2nd Soldier Oath (Indonesian National Armed Forces Soldiers will obey the law and uphold soldiering discipline), 4th Eighth Army Mandatory (maintaining self-respect in public). In the Medan Military Court I Decision, there have been homosexual deviant behavior committed by two active Indonesian Army soldiers whose unit area is located at Hubdam I/Bukit Barisan Jl. Ujung Namorambe Medan Tourism Work.

#### **6. ANALYSIS:**

##### **A. Proof of the Military Prosecutor of the Medan Military Court I in the Context of Proofing the Indonesian Army Soldiers Who Committed Crimes of Homosexual Morality in Decision Number 130-K/PM.I-02/AD/XII/2019**

In carrying out his proof of the alternative charges, the military prosecutor is guided by the statements of the witnesses, the statements of the defendants and the evidence of letters and instructions. So the author assumes that in applying Article 281 of the 1st Criminal Code and Article 103 paragraph (1) of the Criminal Procedure Code is not in accordance with the value of legal certainty because the application of Article 281 of the 1st Criminal Code and Article 103 paragraph (1) of the Criminal Code to perpetrators of same-sex relationships or homosexuals does not This is appropriate because if you look at Article 281 of the 1st Criminal Code, it is a regulation regarding criminal acts of decency committed in public. So if this article is used for perpetrators who have same-sex relations in accordance with the decision of the Military Court Number 130-K/PM.I-02/AD/XII/2019, it will lead to a new interpretation that having same-sex relations can be done in a closed room on condition that no one knows it.

##### **B. Basis for Judgment of the Judges of the Military Court of Medan I in Sentencing Criminals Against Army Soldiers Who Committed Crimes of Homosexual Morality in Decision Number 130-K/Pm.I-02/Ad/Xii/2019**

So in its consideration, the Panel of Judges is of the opinion that the personal considerations related to the defendant as previously mentioned are circumstances involving the defendant and have no relevance to proving the elements of the criminal offense charged. So the Court of Appeal rejected it in its entirety.

##### **C. Sentencing Sentences Given By The Judge Of The Military Court I Medan In Decision Number 130-K/Pm.I-02/Ad/Xii/2019 Has Been In Accordance With The Purpose Of The Law**

In the context of justice applied by the judge to the defendant, especially in imposing criminal decisions for the TNI who committed homosexual crimes, the judge applied the concept of commutative justice, namely justice handed down by the Panel of Judges in the form of sentencing decisions against the defendant and the witnesses were the same regardless of position and so on. In the decision of the Medan Military Court I Number 130-K/PM.I-02/AD/XII/2019, the defendant (Candra) and witness-2 (Hasan) were legally proven to have

committed a crime in Article 281 of the 1st Criminal Code. The defendant and witness-2 had same-sex relations (homosexual) in the room of Mess Hubdam I/BB Jl. Ujung Namorambe Medan Tourism Work 2 (two) times, with the door open. In the indictment indicted by the Military Prosecutor Number SDAK/84/AD/K/I-02/XII/2019, the defendant was charged with a 10 (ten) month imprisonment and an additional sentence of dismissal from military service.

## **7. CONCLUSION :**

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The evidence carried out by the Military Prosecutor of the Medan Military Court I against Indonesian Army Soldiers who committed homosexual decency crimes in decision Number 130-K/PM.I-02/AD/XII/2019 was in accordance with applicable legal procedures. The Military Prosecutor gave alternative charges, namely Article 281 of the 1st Criminal Code and Article 103 paragraph (1) of the Criminal Procedure Code.
- 2) The basis for the consideration of the Judge of the Medan Military Court I in imposing a sentence on an Army soldier who committed a homosexual decency in the decision Number 130-K/PM.I-02/AD/XII/2019 was based on considerations of the philosophical conviction and the purpose of the criminal application. In addition, there are non-juridical considerations on subjective and objective factors in the defendant in order to determine the severity of the crime.
- 3) The criminal conviction of the defendant in the decision of the Medan Military Court I Number 130-K/PM.I-02/AD/XII/2019 based on the legal objective, namely that the value of expediency has been fulfilled by punishing the defendant and witnesses-2 for having had same-sex relationships in Mes's room with the door open.

## **REFERENCES:**

1. Martiman Prodjohamidjojo, 1983, *Sistem Pembuktian dan Alat-alat Bukti*, Ghalia, Jakarta, page 12.
2. P. A. F. Lamintang, 1994, *Hukum Panitensier Indonesia*, Armico, Bandung, page 47.
3. Shinta Agustina, 2014, *Asas Lex Specialis Derogat Legi Generaly Dalam Penegakan Hukum Pidana*, Themis Book, Yogyakarta, page 25.
4. Moeljatno, 1995, *Penyelesaian Perkara Pidana Berdasarkan KUHAP (System Dan Prosedur)*, Alumni, Bandung, page 23.
5. Supandriyo, 2019, *Asas Kebebasan Hakim Dalam Penjatuhan Pidana-Kajian Komprehensif Terhadap Tindak Pidana Dengan Ancaman Minimum Khusus*, Arti Bumi Indaran, page 137.
6. Zainuddin Ali, 2011, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, page 105.