

Law enforcement against Indonesian army soldiers committing the criminal act of bigamy (Case Study of Supreme Court Decision Number 108 K/MIL/2023)

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Article History

Received on 1 May 2025

1st Revised on 10 May 2025

Accepted on 27 May 2025

Abstract

Purpose: There are many cases of multiple marriage crimes committed by Indonesian Army soldiers who are subject to criminal penalties as stipulated in Article 279 paragraph (1) Ke 1 of the Criminal Code, the law enforcement is not yet concrete and consistent. Based on SEMA 3 of 2015, soldiers who commit multiple marriage crimes must be dismissed from military service, but in the Supreme Court Decision Number 108 K / MIL / 2023 they were acquitted. From this background, the author examines how law enforcement and the impact of the decision are carried out using qualitative normative legal research with phenomenology and a descriptive case approach.

Research/methodology: The theories used in this study are the theory of criminal responsibility and the theory of deterrence (Deterrence theory).

Conclusions: The conclusion of this study is that law enforcement against Indonesian Army soldiers is carried out by law enforcement officers in a Military Justice system in accordance with Law Number 31 of 1997 concerning Military Justice, while the impact of the acquittal can have an impact on the law, an impact on the consistency of law enforcement, an impact on institutions, an impact on the perpetrators and also an impact on the family.

Keywords: *Law enforcement, Military, Criminal Acts, Multiple Marriages*

How to cite: Riyadi, S. (2024). Law enforcement against Indonesian army soldiers committing the criminal act of bigamy (Case Study of Supreme Court Decision Number 108 K/MIL/2023). *Dynamics of Politics and Democracy*, 4(1), 1-16.

1. Introduction

Law enforcement against multiple marriage cases in the TNI environment needs to be improved because the methods/modes of perpetrators to carry out multiple marriages are increasingly developing, such as carrying out multiple marriages underhand so that their second, third and subsequent marriages are not known to either the legal wife or the unit. In general, the reason TNI soldiers carry out multiple marriages underhand is only to avoid adultery, because first love rekindles, momentary lust and so on. These perpetrators prefer to carry out multiple marriages underhand/siri because they assume that carrying out a siri marriage will not be able to be processed legally because the marriage is not officially registered (Zahrani, Nurmayani, & Deviani, 2022).

The validity of a marriage has been expressly regulated in Law Number 1 of 1974 on Marriage, Article 2 paragraph (1) states: A marriage is valid if it is carried out according to the laws of each religion and its beliefs. From the description of the article, it is very clear that in order for a marriage to be declared valid, it must be carried out based on religious law and according to the beliefs of the

perpetrators. Based on this, multiple marriages under the hand/siri marriages carried out according to Islam are valid according to Islam, but are not recognized because they are not registered, however, registration of the marriage according to Article 5 of the Compilation of Islamic Law (KHI) contains the meaning that registration of the marriage is not actually a requirement for a valid marriage but only as evidence to create order in marriage (Khairani 2023). This is confirmed by the MUI Fatwa Number 10 of 2008, the contents of which are stated in the legal provisions of point (a) that a marriage under the hand is valid because it has met the requirements and pillars of marriage, but is forbidden if there is harm. Based on this, TNI soldiers who are Muslims who carry out multiple marriages under the hand according to Islam, the actions carried out by the TNI soldiers can be subject to criminal penalties according to Article 279 of the Criminal Code: Paragraph (1) Threatened with a maximum imprisonment of five years. 1st Anyone who enters into a marriage while knowing that his existing marriage or marriages are a valid obstacle to that (Edla et al., 2025; Pratiwi, Dewi, Widnyani, & Rahayu, 2023).

The purpose of criminal sanctions for TNI soldiers who commit multiple marriages that violate Article 279 of the Criminal Code is so that TNI soldiers who have been known as the most disciplined institution, submit and obey the law and always maintain the honor and good name of the unit as well as the honor of themselves and their families are certainly expected not to violate laws and regulations. With the existence of harsh and firm sanctions, it is hoped that it will be an effort to prevent other perpetrators/individuals from committing similar crimes (Hamzah, 1994). The imposition of severe criminal penalties for TNI soldiers who commit crimes aims to provide deterrence (Deterrence) (Idham et al., 2023; Manalu, Idham, & Erniyanti, 2023; Ridho, 2023).

In enforcing the law against perpetrators of multiple marriages in a secret manner in the military court environment, judges appear to be wiser and more prudent, this can be seen from the judge's decisions which mostly follow previous decisions (Jurisprudentie) that already exist for similar cases. The crime of multiple unregistered marriages committed by TNI soldiers is strictly prohibited by TNI soldiers in accordance with Article 3 of TNI Regulation Number 50 of 2014 concerning Procedures for Marriage, Divorce and Reconciliation for TNI soldiers, as well as in the Decree of the Chief of Army Staff Number Kep/496/VII/2015 dated 27 July 2015 concerning Technical Instructions for Procedures for Marriage, Divorce and Reconciliation for TNI Army soldiers. Meanwhile, for maximum law enforcement against perpetrators of multiple marriages, the Supreme Court of the Republic of Indonesia issued SEMA Number 3 of 2015 which states that unregistered/irregular marriages committed by TNI soldiers must be found guilty of violating Article 279 paragraph (1) Ke 1 of the Criminal Code and TNI soldiers who commit multiple unregistered marriages must be subject to additional punishment in the form of dismissal from military service.

With the rampant multiple marriages in the TNI environment, it is very natural that TNI soldiers who commit multiple marriages are sentenced to criminal penalties up to dismissal from military service by the Military Court, because multiple marriages in the TNI are a very serious moral problem and can harm the norms of life of TNI soldiers and tarnish the good name of the TNI institution in general and the TNI soldier's unit in particular, but also have a very bad impact, both on the family and on the personal life of TNI soldiers. In addition, multiple marriages can also affect the performance and discipline of TNI soldiers, because TNI soldiers who commit multiple marriages usually have a life in their daily relationships in their units and in society that is no longer calm and tend to have many problems that can ultimately threaten the effectiveness of military operations at a more complex level.

That not all TNI soldiers who have more than one marriage/multiple marriages are sentenced to criminal penalties up to dismissal, some are actually acquitted by the Military Court as in the Supreme Court Decision Number 108 K/MIL/2023 in the name of Serka Adi Siswanto NRP 31940577450875 Baurhar Timhub, Timhub 2 Subdenhub 1 Denhubrem 082/CPYJ. The existence of an acquittal verdict against TNI soldiers who have committed the crime of multiple marriages is an irony that is truly astonishing and surprising for law enforcement efforts against TNI soldiers which are currently being carried out intensively and contrary to the foundations of TNI soldiers' lives, so that the acquittal verdict handed down by the court is very detrimental to the sense of justice in society.

The acquittal of the perpetrators of the crime of multiple marriages is also very interesting to conduct in-depth research and study both in terms of legal regulations for TNI soldiers, especially the TNI AD who commit multiple marriages, so it is also necessary to know the impact of the judge's decision, what factors and obstacles influence law enforcement by the Military Court in deciding criminal acts committed by TNI soldiers, especially the TNI AD who commit the crime of multiple marriages which are threatened with Article 279 of the Criminal Code in order to achieve legal effectiveness in providing justice to the perpetrators and victims of the crime of multiple marriages.

With the problems in the background, the author is interested in conducting research and raising it in a thesis with the title, "**Law Enforcement Against TNI AD Soldiers Who Commit the Crime of Multiple Marriages (Case Study of Supreme Court Decision Number 108 K / MIL / 2023)**".

1.1. Problem Formulation

Based on the description of the problems in the background, the main problems raised can be formulated as follows:

1. How is the law enforcement against Indonesian Army Soldiers who have multiple marriages in the Supreme Court Decision Number 108K/MIL/2023?
2. What is the impact of the Supreme Court Decision Number 108K/MIL/2023 on law enforcement for Indonesian Army Soldiers?

2. Literature Review

2.1. Law Enforcement

The definition of law enforcement can be formulated as an effort to implement the law properly, supervise its implementation so that no violations occur, and if a violation occurs, restore the violated law so that it can be re-enforced (Muhammad 2014). Meanwhile, according to Brigadier General TNI Dr. M. Ali Ridho, S.H., M.Hum, law enforcement is the process of making efforts to enforce or function legal norms in real terms as a guideline for behavior in traffic or legal relations in community and state life (Olajubu, 2022; Ridho, 2023).

2.2. Marriage

Marriage according to Law Number 1 of 1974 concerning Marriage, Article 1 states: Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God. According to the Civil Code, the definition of marriage is not clearly defined in Article 26 of the Civil Code, only viewing marriage in civil relations (Subekti 2017). According to the Compilation of Islamic Law (KHI), the definition of marriage is a very strong contract or mitsosaqan ghaliidhan to obey the commands of Allah SWT. and carrying it out is worship (Abdurrahman, 2007; Bismar et al., 2022; Roy, 2022).

2.3. Multiple Marriage or Polygamy

Polygamy literally means multiple marriages, thus polygamy is a marriage where a man marries more than one wife at the same time, meaning not at the time of the *ijab qabul* but at the time of living a family life (Rohman, 2020). According to Soemiyati (1982) in her book, polygamy is defined as a marriage between a man and more than one woman at the same time.

A man who will carry out multiple marriages according to Article 3 paragraph (2) must obtain written permission from the Court in his area of residence with the conditions according to Article 4 paragraph (2) which states: The Court referred to in paragraph (1) of this Article only grants permission to a husband who will have more than one wife with the following provisions:

- a. The wife cannot carry out her obligations as a wife;
- b. The wife has a physical disability or an incurable disease;
- c. The wife cannot give birth to offspring.

2.4. Criminal Acts Against Marriage

The Criminal Code (KUHP) consists of 3 books consisting of Book I on General Provisions, Book II on Crimes and Book III on Violations. Criminal acts of marriage are contained in Book II of Crimes, Chapter XIII on Crimes against the origin of marriage. Crimes against the origin of marriage include: Articles 277, 278, 279 and Article 280 of the Criminal Code. Meanwhile, the crime of multiple marriages regulated in Article 279 paragraph (1) states:

Threatened with a maximum imprisonment of five years:

1. Anyone who enters into a marriage knowing that his/her existing marriage or marriages are a legal barrier to that.
2. Anyone who enters into a marriage knowing that his/her marriage or marriages of the other party are a legal barrier to that (Moeljanto 2011).

In addition to being regulated in Article 279 of the Criminal Code, the criminal act of multiple unregistered marriages in the TNI environment has also been regulated by the Supreme Court of the Republic of Indonesia through SEMA Number 3 of 2015 in the Military Chamber section Point 3C which reads: That a TNI soldier who carries out unregistered marriages more than once without being recorded by an authorized official, the unregistered marriages that have been carried out must be found guilty of violating Article 279 paragraph (1) Ke-1 of the Criminal Code. Carrying out these unregistered marriages must be considered valid according to the Islamic religion and if the unregistered marriage can be proven in court, the court's decision must consider that there has been a multiple marriage that is not permitted in the life of a TNI soldier, and the soldier must be dismissed from military service/fired.

The criminal dismissal was given because in the TNI institution, TNI soldiers are not allowed to have more than one wife/husband according to Article 3 of the TNI Commander Regulation Number 50 of 2014 concerning Procedures for Marriage, Divorce and Reconciliation for Soldiers, as well as in the Decree of the Army Chief of Staff Number Kep/496/VII/2015 dated July 27, 2015 concerning Technical Guidelines for Procedures for Marriage, Divorce and Reconciliation for Soldiers.

With the above, the problem that may arise is if the existing marriage does not meet the statutory requirements so that it can be canceled. So there are two opinions regarding this, namely:

1. According to Simon-Pompe and Noyon-Langemeyer, the perpetrator can still be punished because the previous marriage still existed before it was canceled.
2. According to Van Bemmelen, the perpetrators cannot always be punished but there is a possibility that this is suspended on the settlement of a civil case regarding whether or not the previous marriage was canceled (Sekoh, 2021).

Based on the differences of opinion, the first opinion means that the perpetrator must still be punished, while the second opinion is that the criminal case is suspended to be resolved first in the civil case (marriage) by the Religious Court in accordance with Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, then the decision of the Religious Court is used as the basis for deciding the criminal act committed by the Defendant, this is in accordance with what is desired by the Supreme Court by issuing Supreme Court Regulation Number 1 of 1956, Article 1 which reads: If in the examination of a criminal case it must be decided whether there is a civil matter regarding an item or regarding a legal relationship between two certain parties, then the examination of the criminal case can be suspended to await a court decision in the examination of the civil case regarding the existence or non-existence of civil rights.

3. Research Methodology

3.1. Type of Research

In this study, the author uses normative legal research. This normative legal research is research conducted by studying and analyzing legal texts such as laws, regulations, court decisions, legal documents and so on to find legal rules which are then applied in a legal case (Ali, 2021). Normative legal research is also called doctrinal research (Efendi & Ibrahim, 2018). This normative legal

research is conducted by studying applicable regulations, such as Law Number 1 of 1946 concerning the Criminal Code, and Supreme Court Decision Number 108 K/MIL/2023.

3.2. Nature of Research

The research is qualitative with a phenomenological method with a descriptive case study research design. This study aims to provide a detailed description of the problem being studied, namely law enforcement against Indonesian Army soldiers who have multiple marriages. In addition, this study also aims to analyze the existing data critically and logically, so that it can provide an in-depth understanding of the existing legal problems.

3.3. Collection of Legal Materials

The method of collecting legal materials is carried out through document studies of secondary data. For secondary data in legal research, it can be limited to the use of document studies or library materials only. This library method is carried out easily, effectively and efficiently by simply visiting the library, such as the library at the Military Law College, and the existing National Library, this is done to read, study and review existing literature and other sources related to the material discussed in the thesis with the intention of obtaining theoretical materials that are directly or indirectly related which will be used as a theoretical basis.

3.4. Legal Material Analysis

The data that has been studied is then analyzed qualitatively, namely by collecting research data to be processed first and then concluded, so as to obtain information and answers to research problems, namely by analyzing Decision Number 108K/MIL/2023.

3.5. Drawing Conclusions

Drawing conclusions is done using two thought patterns, namely deductive and inductive (Soekanto & Mamudji, 2009). Deductive method, meaning a method of drawing more specific conclusions from general statements. The deductive method is done by examining the understanding and general theories related to law enforcement against the crime of multiple marriages committed by Soldiers based on the principles of justice and the principle of proportionality.

4. Results and Discussions

4.1. Multiple Marriage Crimes Committed by Indonesian Army Soldiers in Research

4.1.1. Position Case

The case position in the research is as follows:

Sergeant First Class Adi Siswanto became an Indonesian Army soldier in 1994 through the Secata PK Wave I education at Rindam V/Brawijaya and after graduating he was inaugurated with the rank of Prada and then assigned to Hubdam VI/Tanjungpura, after experiencing several promotions and transfers, until the time of committing the crime that became this case Sergeant First Class Adi Siswanto was still on active duty at Denhubrem 082/CPYJ with the rank of Sergeant First Class NRP 31940577450875. Sergeant First Class Adi Siswanto knew Ms. Suratemi in 1997, then Sergeant First Class Adi Siswanto married Ms. Suratemi on September 27, 2005 at the KUA. District. Balikpapan Timur, Balikpapan City, East Kalimantan, according to the Marriage Certificate Excerpt Number 429/12/X/2005.

Around the end of September 2021, Sergeant Adi Siswanto went to Bu Titin's coffee shop in Kandangan, Kedungrejo Village, Tanjunganom District, Nganjuk Regency. At that place, the Defendant got acquainted with Ms. Nur Khamida alias Winda, a widow with 3 (three) children, then Sergeant Adi Siswanto seduced and was going to marry Ms. Nur Khamida, after that the Defendant invited Ms. Nur Khamida into the room, after being in the room Sergeant Adi Siswanto told about his less than harmonious household life because he had been married for 23 years but had not been blessed with children, after that Sergeant Adi Siswanto invited Ms. Nur Khamida to have sex like husband and wife, after finishing Sergeant Adi Siswanto gave money amounting to Rp. 200,000.00 (two hundred thousand rupiah) to Ms. Nur Khamida.

Three days later, Sergeant Adi Siswanto came to Siti Eka Safiani's shop and met Ms. Nur Khamida, then Sergeant Adi Siswanto told Ms. Nur Khamida again that his household was not harmonious because they had not been blessed with children during their marriage, then Sergeant Adi Siswanto invited Ms. Nur Khamida to have a secret marriage, to avoid adultery then Sergeant Adi Siswanto told Ms. Nur Khamida to find someone who could have a secret marriage. On September 18, 2021, Ms. Nur Khamida contacted Mr. Suyanto to find someone who could have a secret marriage, then Ms. Nur Khamida contacted Mr. Ali Yusuf to be the marriage officiant between the Defendant and Ms. Nur Khamida which was planned to be held on Thursday, September 23, 2021 at Ms. Nurul Kripta's house, address Dusun Dukuhan, Rt. 04, Rw. 04, Sidoharjo Village, Tanjunganom District, Nganjuk Regency.

On October 2, 2021, Ms. Nur Khamida told the Defendant that there was someone who could marry him, namely Mr. Suyanto alias Pak Dalang, Tanjunganom Nganjuk address, then, Sergeant Adi Siswanto and Ms. Nur Khamida went to Mr. Suyanto's house in Dukuhan Hamlet, Rt. 04, Rw. 04, Sidoharjo Village, Tanjunganom District, Nganjuk Regency, and when they arrived at the house, Ms. Siti Eka Safiani, Mr. Abdul Malik and Mr. Suyanto were already there, then the marriage *ijab qabul* process between Sergeant Adi Siswanto and Ms. Nur Khamida was carried out in the following way, first Sergeant Adi Siswanto and Ms. Nur Khamida sat on the chairs, then the registrar Mr. Ali Yusuf shook the Defendant's hand while saying "I marry Brother Adi Siswanto to Sister Nur Khamida with a dowry of Rp. 200,000.00 (two hundred thousand rupiah) paid in cash", then the Defendant answered, "I accept the marriage of Sister Nur Khamida with a dowry of Rp. 200,000.00 (two hundred thousand rupiah) paid in cash". After that, Mr. Ali Yusuf asked the marriage witnesses, namely Mr. Abdul Malik and Mr. Suyanto "Is it valid?", and Mr. Abdul Malik and Mr. Suyanto answered "sah".

After the *Ijab qabul* process, Mr. Ali Yusuf led the prayer and after that it was continued with a thanksgiving event led by Mr. Suyanto in the form of *tumpeng* rice. The wedding was funded by Serka Adi Siswanto in the amount of Rp. 1,200,000.00 (one million two hundred thousand rupiah) which was used for the registrar of Rp. 500,000.00 (five hundred thousand rupiah) to make *tumpeng* rice of Rp. 400,000.00 (four hundred thousand rupiah) and for the marriage witnesses Rp. 300,000.00 (three hundred thousand rupiah). The unregistered marriage was not issued a certificate, but Serka Adi Siswanto made his own certificate of unregistered marriage to be used when renting a house with Ms. Nur Khamida. The reason Serka Adi Siswanto had an unregistered marriage was because his relationship with his legal wife was no longer harmonious and during the 23 (twenty three) years of marriage they had not been blessed with children.

On December 5, 2021, Ms. Nur Khamida sent a Facebook friend request to Ms. Dian Ernawati with the intention of seeking information about Sergeant Adi Siswanto's legal wife, then Ms. Nur Khamida communicated with Ms. Dian Ernawati via messenger and WhatsApp which was named by Ms. Dian Ernawati with the name *wedoo's* boil, then Ms. Nur Khamida sent intimate photos with Sergeant Adi Siswanto, then because Ms. Dian Ernawati was annoyed that Ms. Nur Khamida always sent WhatsApp, so Ms. Dian Ernawati told the younger sibling of Sergeant Adi Siswanto's legal wife named Mr. Rhomadhon about the information.

While cleaning Ms. Suratemi's house, she found a paper with a certificate of unregistered marriage between the Defendant and Ms. Nur Khamida, then Ms. Suratemi asked about it to Sergeant Adi Siswanto which made Sergeant Adi Siswanto angry and he rarely came home. Because of the actions of Sergeant Adi Siswanto who remarried Ms. Nur Khamida unregisteredly, Ms. Suratemi felt hurt and disappointed because she had been betrayed by Serka Adi Siswanto so that Ms. Suratemi reported Serka Adi Siswanto to the Nganjuk Pom Unit, Denpom V/1 Madiun so that he would be processed according to applicable law.

4.2. Law Enforcement Against Indonesian Army Soldiers Who Have Multiple Marriages in the Decision of the Supreme Court of the Republic of Indonesia Number 108 K/MIL/2023

Law enforcement in the TNI environment is different from law enforcement against civilians which uses Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law, while

law enforcement in the TNI environment which has its own special characteristics is carried out by law enforcement officers in a Military Justice system regulated in Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice. Law Number 31 of 1997 concerning Military Justice, when viewed in its considerations, is compiled by combining various concepts of national criminal procedure law such as Law Number 8 of 1981, State Administrative Procedure Law (Law Number 5 of 1986) plus special characteristics derived from the principles and characteristics of the lives of TNI Soldiers.

The law enforcement process for TNI Soldiers who commit a crime in Law Number 31 of 1997 is regulated in general provisions, the structure and powers of the court, the structure and powers of the Auditorate and Military Criminal Procedure Law. Military Criminal Procedure Law is specifically regulated in Chapter IV starting from the investigation and inquiry process to the process of supervision and observation of the implementation of court decisions regulated in Articles 69 to 264 of Law Number 31 of 1997 concerning Military Justice. In enforcing the law within the TNI, the absolute authority and relative authority of the Military Court must also be considered, where absolute authority is the authority of the court to try a case based on its subject and object, while relative authority is the authority of a similar court to examine and decide a case based on its jurisdiction. The Absolute Authority of the Military Court is regulated in Article 9 of Law Number 31 of 1997 concerning Military Justice, namely:

1. The Military Court has the authority to try criminal acts committed by a person who at the time of committing the crime is:
 - a. A soldier;
 - b. One who is considered a soldier by law;
 - c. A member of a group or office or body, or one who is considered or considered a soldier by law;
 - d. A person who is not included in letters a, b, and c, but by decision of the Commander in Chief with the approval of the Minister of Justice must be tried by a court within the Military Court environment.
2. Examine, decide and resolve disputes over the Administration of the Armed Forces;
3. Combine compensation cases in the relevant criminal case at the request of the injured party as a result of the criminal act that is the basis for the indictment and simultaneously decide both cases in one decision.

Meanwhile, the relative authority of the Military Court is regulated in Article 10 of Law Number 31 of 1997, which states: Courts within the Military Court environment try criminal acts committed by them as referred to in Article 9 number 1 which:

1. The place of the incident is in its jurisdiction, or
2. The defendant is part of a unit within its jurisdiction.

An understanding of absolute authority and relative authority is very important because not all cases or criminal acts can be resolved in the Military Court, this is because in Indonesia there are 4 (four) judicial bodies within the Supreme Court of the Republic of Indonesia which have the authority to try a case according to the authority of each judicial body as follows:

1. The General Court has the authority to examine, try and decide criminal and civil cases.
2. The Religious Court examines, tries, decides and resolves cases between people who are Muslim.
3. The Military Court has the authority to examine, try and decide military criminal cases.
4. The State Administrative Court has the authority to examine, try, decide and resolve state administrative disputes.

Based on the authority of each of the judicial institutions above, to carry out the law enforcement process against criminal acts committed by military subjects must go through military courts. The jurisdiction of the military court environment only tries military (subjects). Jurisdiction and justiciability are two complementary terms. If jurisdiction questions matters related to the power to examine and try, then justiciability questions the people being examined and tried who are included in that power.

For TNI soldiers who commit a crime, the applicable law is not only that contained in the Criminal Code, but in addition to being subject to the Criminal Code, they can also be subject to the Criminal Code and other laws and regulations as stated in:

1. Article 103 of the Criminal Code which states: The provisions in Chapters I to VIII of this Book also apply to acts that are subject to criminal penalties by other laws and regulations, unless otherwise specified by law.
2. Article 2 of the Criminal Code states: For criminal acts not listed in this code, which are committed by people who are subject to the authority of military courts, general criminal law shall apply, unless there are deviations which are implemented by law.

The above articles are a link to the application of other laws against TNI soldiers who commit crimes that are not regulated in the Criminal Code. With these provisions, it shows that the TNI institution is very serious in its efforts to enforce the law because every criminal act committed by TNI soldiers can be subject to the Criminal Code, Criminal Code and other laws and regulations. Therefore, TNI soldiers who commit the crime of multiple marriages without the permission of their legal wife, without the permission of the unit and without permission from the competent court can be subject to legal sanctions contained in the Criminal Code which is still in effect, namely Law Number 1 of 1946 concerning Criminal Law Regulations, the systematics of which consist of three books, namely Book I concerning general rules, Book II concerning crimes and Book III concerning violations.

The crime of multiple marriages in the Criminal Code is regulated in Book II, Crimes, Chapter XIII concerning Crimes against the origin of marriage. In Chapter XIII there are 4 (four) articles, namely Article 277 of the Criminal Code, Article 278 of the Criminal Code, Article 279 of the Criminal Code and Article 280 of the Criminal Code. The crime of multiple marriage committed by a man who already has one wife and then marries again, either with a second, third wife and so on is regulated in Article 279 paragraph (1) ke-1 of the Criminal Code which reads: shall be subject to a maximum prison sentence of five years:

Ke-1: Whoever enters into a marriage while knowing that his existing marriage or marriages are a legal obstacle to that.

Article 279 paragraph (1) 1 of the Criminal Code is applied to perpetrators of multiple marriages because in principle (the principle of monogamy) in a marriage a man is only allowed to have one wife and a woman is only allowed to have one husband (Article 3 of Law No. 1 of 1974), specifically for men who intend to remarry (multiple marriages) but are not criminalized, there must be court permission for the reasons that have been determined according to Article 4 and Article 5 of Law No. 1 of 1974, they may have more than one wife (Sianturi, 1983).

The application of Article 279 paragraph (1) 1 of the Criminal Code for TNI soldiers who commit the crime of multiple unregistered marriages without the permission of their legal wife, the permission of the Unit and the permission of the competent court according to applicable laws has become the attention of the Supreme Court of the Republic of Indonesia so that perpetrators of multiple unregistered marriages within the TNI environment are given firm and harsh criminal sanctions in accordance with SEMA Number 3 of 2015 in the Military Chamber section, Point 3 Marriage, point C, which states: That a TNI soldier who carries out unregistered marriages more than once without being recorded by an authorized official, the unregistered marriage that has been carried out must be accused of violating Article 279 paragraph (1) 1 of the Criminal Code. The unregistered marriage must be considered valid according to the Islamic religion and must be considered to have occurred multiple marriages, which are not permitted in the lives of TNI soldiers so that the soldier must be dismissed from military service/fired.

According to R. Soesilo in his book, the requirement for a person to be punished according to Article 279 paragraph (1) 1 of the Criminal Code is that the perpetrator must know that he or she was previously married and the marriage has not been dissolved. Based on the expert opinion, this means strengthening SEMA Number 3 of 2015 so that perpetrators of multiple marriages in the TNI

environment must be subject to strict and firm criminal sanctions, as long as the perpetrator knows and is aware that he or she is still bound by a legal marriage with his or her previous wife.

According to the author, the attention of the Supreme Court in the form of SEMA Number 3 of 2015 is also a manifestation of the Supreme Court's seriousness in enforcing the law against TNI soldiers who commit the crime of multiple marriages in secret, in addition to being an effort to deter (Deterrence) so that both the perpetrator in this case the Defendant and other TNI soldiers who know about the SEMA will feel afraid because in the SEMA there is a threat of additional punishment of dismissal from military service which is the most severe punishment and feared by TNI soldiers. The SEMA is very relevant to be applied concretely and consistently to TNI soldiers who commit the crime of multiple marriages in secret.

SEMA Number 3 of 2015 can also be used as a guideline for law enforcement officers within the TNI so that there is no more hesitation in prosecuting TNI soldiers who carry out multiple unregistered marriages under Article 279 paragraph (1) to 1 of the Criminal Code, because there are still law enforcers who are still hesitant and consider unregistered marriages, although valid according to religion, to be not recognized by the government so that they cannot be punished under Article 279 paragraph (1) to 1 of the Criminal Code.

In relation to the case of multiple unregistered marriages in the case study in the research in Chapter III conducted by the Defendant Serka Adi Siswanto NRP 31940577450875 Baurhar Timhub, Timhub 2 Subdenhub 1 Denhubrem 082/CPYJ in the Decision of the Supreme Court of the Republic of Indonesia Number 108K/MIL/2023 which was acquitted, then in the author's opinion in analyzing the case in relation to how law enforcement is carried out by law enforcement officers in enforcing the law against cases in acquittals will be described below.

According to the author, the case of multiple marriages in the Decision of the Supreme Court of the Republic of Indonesia Number 108K/MIL/2023 on behalf of the Defendant Serka Adi Siswanto NRP 31940577450875 above, the Defendant was only charged with ordinary charges because he was only charged with one article, namely Article 279 paragraph (1) to 1 of the Criminal Code. This is in accordance with the understanding of a regular indictment, namely an indictment that is formulated in a "single" formula, namely an indictment that only contains one indictment (Harahap, 2007).

In this case, the Defendant was charged based on the Indictment Number Sdak 34 / K / OM.III-12 / AD / VIII / 2022 dated August 3, 2022, in which in the indictment the Prosecutor charged the Defendant that at the times and places mentioned below, namely on Thursday, the twenty-third of September in the year two thousand twenty-one or at least at some time in September in the year two thousand twenty-one or at least still in the year two thousand twenty-one, located in Dusun. Dukuhan, RT. 04, RW. 04, Sidorejo Village, Tanjunganom District, Regency. Nganjuk, or at least in a place that is included in the jurisdiction of the III-13 Madiun Military Court, which has the authority to examine and try this case, has committed the crime of "Anyone who enters into a marriage while knowing that the marriage or marriages that already exist are a legal obstacle to that". As regulated and threatened with criminal penalties under Article 279 paragraph (1) to 1 of the Criminal Code.

If we look closely at the case position from the results of the research in the field in the previous chapter, namely Chapter III, it is related to the evidence and witnesses presented in the trial of the III-13 Madiun Military Court as many as 10 (ten) people. However, of the 10 people, Ms. Nur Khamida's parents (biological father) who should have been the marriage guardian were not included in the list of witnesses and were also not present at the trial at the III-13 Madiun Military Court.

By considering Article 172 of Law No. 31 of 1997 concerning Military Justice, there is a possibility of a lack of valid evidence such as the absence of Ms. Nur Khamida's parents (biological father), and other witnesses who support the evidence in court were also not present including the absence of Expert Witnesses, according to the author, the Defendant should not only be charged with a single

charge because there is a possibility that the charge is not proven. When viewed from its form, there are 5 (five) forms of indictment, namely:

1. Ordinary/single indictment. This indictment contains only one indictment.
2. Alternative indictment, namely an indictment that excludes each other or (one that substitutes for another), this indictment is for:
 - a. To avoid the perpetrator being released or freed from criminal liability.
 - b. To give the Judge the option to apply a more appropriate law.
3. Subsidiary indictment.
4. This form of indictment consists of two or more indictments that are arranged and lined up sequentially starting from the most serious criminal charge to the lightest criminal charge.
5. Cumulative indictment, namely an indictment that is composed of several series of several charges for crimes or violations.
6. Combination indictment which is a combination of several forms of indictment.

In the author's opinion, of the 5 (five) forms of indictment above, the most suitable indictment to charge the Defendant is the alternative indictment. This is intended to provide the Military Court judge with the option to determine which indictment is appropriate to be held accountable to the Defendant in connection with the crime he committed. The alternative indictment that is suitable to be charged to the Defendant is the first indictment of Article 279 paragraph (1) 1 of the Criminal Code or the second alternative indictment of Article 284 paragraph (1) 1 a of the Criminal Code which reads: A married man who commits adultery, even though it is known that Article 27 BW applies to him. or the third alternative indictment of Article 281 1 of the Criminal Code which reads: Whoever intentionally and openly violates morality.

These articles are suitable to be applied in this case considering that if the multiple marriage in secret (in Article 279 paragraph (1) 1 of the Criminal Code) is not proven legally and convincingly, then it means that the Defendant and Ms. Nur Khamida committed adultery (Article 284 paragraph (1) Ke 1 of the Criminal Code) or committed immoral acts (Article 281 Ke 1 of the Criminal Code), because they had lived together and often had sexual relations like husband and wife. In addition, when viewed from the testimony of a witness named Ms. Dian Ernawati (Witness 2) who admitted to often being sent intimate photos between the Defendant and Ms. Nur Khamida, plus the evidence submitted in the indictment at the III-13 Madiun Military Court, one of which was 1 (one) sheet of intimate photos of the Defendant, Sergeant First Class Adi Siswanto and Ms. Nur Khamida, so that the testimony of Ms. Dian Ernawati and the evidence of the intimate photos are considered to strengthen the evidence of Article 281 of the Criminal Code if the article is also applied in the prosecutor's indictment.

Based on the above, because Article 284 of the Criminal Code and Article 281 of the Criminal Code were not applied as alternatives in the charges submitted to the III-13 Madiun Military Court and only Article 279 paragraph (1) ke1 of the Criminal Code was applied in the prosecutor's indictment, the Military Court may not reject the case in accordance with Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states: The court is prohibited from refusing to examine, investigate and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it. In addition to not being allowed to reject a case, the Military Court also cannot deviate from the charges submitted by the prosecutor in the Military Court trial and the judge must base it on the prosecutor's charges, this is because the charges are the basis and also the limit of the examination in court which is emphasized in Article 188 of the Republic of Indonesia Law Number 31 of 1997 concerning Military Courts which states:

1. After the examination is declared closed as referred to in Article 182 paragraph (5), the Judge holds a closed and secret deliberation.
2. The deliberation as referred to in paragraph (1) must be based on the indictment and everything that is proven in the examination in court.

Based on Article 188 paragraph (1) and (2) of Law No. 31 of 1997 above, according to the author, the judge had no choice of other charges other than the single charge charged in the indictment letter

Number Sdak/34/K/OM.III-12/AD/VIII/2022 dated August 3, 2022, the court then decided to acquit him of all charges in Article 279 paragraph (1) ke1 of the Criminal Code (criminal act of multiple marriages) committed by Serka Adi Siswanto NRP 31940577450875 in Decision Number 32-K/PM.III-13/AD/VIII/2022 with the consideration that the 2nd element, namely holding a marriage, was not fulfilled and was proven legally and convincingly because the guardian who married did not have the right to marry so that the marriage was deemed non-existent, then the decision was confirmed by the cassation decision of the Supreme Court of the Republic of Indonesia Number 108 K/MIL/2023. With the absence of evidence of the element of marriage because the Defendant's marriage with Ms. Nur Khamida which was carried out was considered invalid because of the "guardian problem" who married did not have the right to marry, in the author's opinion this happened because the law that developed in society was not explored and applied fairly but only based on written laws, whereas in deciding a case the judge should not only be a mouthpiece of the law but the judge is a mouthpiece of justice, this is in accordance with Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that judges and constitutional judges are required to explore, follow and understand the legal values and sense of justice that live in society. Furthermore, in the explanation of Article 5 paragraph (1) it states that this provision is intended so that the decisions of judges and constitutional judges are in accordance with the law and the sense of justice of society.

Article 5 paragraph (1) of Law No. 48 of 2009 and its explanation give meaning that judges as formulators and explorers of legal values that live in society, must go directly into the midst of society in order to understand, know, feel, and be able to dive into the legal feelings and sense of justice that live in society, so that in facing a case or case that falls under a provision of law, which is not in line with the values of truth, justice, or morality and ethics, the judge can make a decision that is in accordance with the legal values and sense of justice that live in society. Based on this, there should be no more perpetrators of multiple marriages in the Indonesian Army who are acquitted, because it is clear that multiple marriages in the Indonesian Army can damage the morals, ethics and foundations of soldiers' lives and are very inappropriate for Indonesian Army soldiers who should be examples in their behavior in their daily lives in society.

In relation to the above, the author will then study and analyze academically the elements of the criminal act threatened in Article 279 paragraph (1) to 1 of the Criminal Code in decision Number 108K/MIL/2023 according to the monotheistic view in Sianturi (2010) book in relation to the theory of criminal responsibility and the opinions of experts in case research in Chapter III as well as interviews with legal practitioners, namely judges and prosecutors.

4.3. Impact of the Supreme Court's Acquittal Decision Number 108 K/Mil/2023 on Law Enforcement for Indonesian Army Soldiers

The final stage of a trial is the decision-making by the judge. The decision-making by the judge is carried out by the judge after the judge receives, examines and tries the perpetrator of the crime in this case the Defendant. Before discussing the impact of an acquittal, we need to first know the forms of final decisions according to the Criminal Procedure Code (UURI No. 8 of 1981 concerning Criminal Procedure).

Based on its form according to the Criminal Procedure Code, there are 3 (three) forms of final decisions, namely a decision of acquittal from all charges (Article 191 paragraph (1) of the Criminal Procedure Code), a decision of release from all legal charges (Article 191 paragraph (2) of the Criminal Procedure Code) and a criminal decision (Article 193 paragraph (1) of the Criminal Procedure Code). Related to the form of the decision above, the Supreme Court Decision Number 108 K / MIL / 2023 in the name of the Defendant Serka Adi Siswanto NRP 31940577450875 is a decision of acquittal from all charges.

With the acquittal in Decision Number 108 K/MIL/2023 in the name of Serka Adi Siswanto NRP31940577450875 Baurhar Timhub, Timhub 2 Subdenhub 1 Denhubrem 082/CPYJ, linked to the criminal responsibility of the Defendant who was acquitted, and the purpose of law enforcement in

the research conducted by the author in Chapter III, the acquittal has very broad consequences in law enforcement, including:

4.3.1. Legal Impact

- a. The acquittal has an impact on the marital relationship between the Defendant and Ms. Nur Khamida, which no longer has legal legitimacy either according to national law or according to Islamic religious law, so that the actions during the unregistered marriage between the Defendant and Ms. Nur Khamida can be categorized as adultery which violates Article 284 of the Criminal Code which is subject to a maximum sentence of 9 (nine) months. However, this article cannot be applied immediately because Article 284 of the Criminal Code is an absolute complaint offense, namely a complaint offense where only the injured parties can complain, in this case the husband or wife of the injured party. In addition to being subject to Article 284 of the Criminal Code, both the Defendant and Ms. Nur Khamida can also be subject to criminal acts against morality which are subject to Article 281 of the Criminal Code with a maximum sentence of two years and eight months.
- b. The acquittal decision can have an impact to be used in extraordinary legal efforts in the form of a Judicial Review (PK) by TNI soldiers who committed similar crimes to the Defendant and were convicted and even dismissed from military service. The requirements for a Judicial Review according to M. Yahya Harahap in his book include:
 - 1) If there is a new condition or Novum.
 - a) If the new situation is known or discovered and brought up during the hearing, it can be a factor and reason for handing down a verdict of acquittal or a decision to be free from all demands of the judge
 - b) If these new circumstances are discovered and known during the trial, they can become reasons and factors for making a decision stating that the public prosecutor's demands cannot be accepted or
 - c) Can be used as a reason and factor for passing a decision by applying lighter criminal provisions
 - 2) If there are conflicting decisions in various decisions, and
 - a) A statement that something has been proven,
 - b) Then the statement regarding the proof of the thing or situation is used as the basis and reason for the decision in a case,
 - c) However, in other case decisions, the things or circumstances that are declared proven are contradictory between one decision and another.
 - 3) If there is a clear error by the judge in the decision (Harahap, 2007).

In the author's opinion, the Judicial Review (PK) was carried out because in enforcing the law against TNI soldiers who committed the crime of multiple unregistered marriages, even though it is religiously legal but violates Article 279 paragraph (1) 1 of the Criminal Code, there has been no consensus between judges in the Military Court environment and even in the Supreme Court environment, even though in fact for cases of multiple unregistered marriages there is already jurisprudence, namely the decision in the multiple marriage case in decision Number 130/K/MIL/2019 dated July 19, 2019 in the name of the Defendant Kopda Nuralam NRP 31020736660283 who committed the crime of Article 279 Paragraph (1) 1 of the Criminal Code in the verdict, he was sentenced to 4 (four) months in prison with an additional sentence of dismissal from military service.

The acquittal of the perpetrators of multiple marriages has a significant impact on the consistency of law enforcement for perpetrators of multiple marriages in unregistered marriages because with the acquittal, it is clear that law enforcement for perpetrators of multiple marriages in the TNI environment, especially the TNI AD, is inconsistent because in the previous decision against the perpetrators of multiple marriages (similar incidents) in decision Number 130 / K / MIL / 2019 dated July 19, 2019 in the name of Kopda Nuralam NRP 31020736660283, he was sentenced to 4 (four) months in prison with an additional sentence of being dismissed from military service. With this, it is also clear that there is no consistency in law enforcement in the TNI environment, even though

consistency in law enforcement is very important for the certainty of just law, so that if law enforcement is inconsistent, it can have several impacts, including the following:

- 1) Public distrust of the law.
- 2) Resolving conflicts with violence.
- 3) Exploitation of inconsistent law enforcement for personal gain.
- 4) Use of foreign pressure in the judicial process.

4.4. Impact on Institutions

With the acquittal in the multiple marriage case, it can have the following impacts:

- a. Decreasing public trust in law enforcement efforts that are being intensively carried out in the TNI environment, especially the TNI AD,
- b. Potentially lowering the morale/work spirit of other members who have worked hard, causing new problems in the institution, namely other soldiers can commit similar acts to the Defendant because they think the act does not violate the law,
- c. Causing a negative stigma in society towards the institution because it is considered to protect soldiers who commit crimes and are only subject to disciplinary sanctions, not criminal sanctions.

4.5. Impact on the Perpetrator/Defendant

The impact of the acquittal decision on the perpetrator/defendant includes the following:

- a. With the acquittal decision, the criminal responsibility of the defendant is automatically removed and the defendant cannot be prosecuted again for the same case (*Ne bis in idem*). Furthermore, *Ne bis in idem* is regulated in Article 76 paragraph (1) of the Criminal Code which states: Except in cases where the judge's decision may still be repeated (*Herziening*), a person may not be prosecuted twice for an act that has been tried by an Indonesian judge with a final verdict.
- b. It can increase the risk of the defendant repeating his actions, because there are no severe criminal sanctions as an effort to deter the perpetrator/defendant from repeating his actions. Based on this, in accordance with the theory of punishment from Vanhamel and Von List (Germany), punishment of the perpetrator according to special prevention aims to prevent the offender from repeating his actions. If associated with this theory, the acquittal decision against the defendant does not have a deterrent effect on the defendant.
- c. It can affect the performance and discipline of the Defendant in the unit, because the Defendant who has multiple marriages usually has an unstable life in his daily relationships in the unit and in society and tends to have many problems which can ultimately threaten the effectiveness of military operations at a more complex level.

4.6. Impact on the Family

- a. For unregistered wives

The acquittal of the Defendant who committed multiple unregistered marriages has an impact on the unregistered wife. The Defendant will not receive her rights as a wife, such as receiving joint property and also cannot sue or file a lawsuit, either criminally or civilly, in court regarding joint property. This occurs because the unregistered wife is only bound unilaterally, but if the unregistered wife wants to formalize her marriage and be recognized by the government, the unregistered wife can take legal action through *Isbat* to the Religious Court because it is related to the validity or otherwise of the marriage, this is in accordance with Article 26 paragraph (1) of Law Number 1 of 1974, Article 7 paragraph (2) and paragraph (3) point c of the Compilation of Islamic Law (KHI).

- b. For Legitimate Wives

The impact of the acquittal of the multiple marriage committed by the Defendant with Ms. Nur Khamida against the Defendant's legitimate wife named Ms. Suratemi can have a wide impact that can lead to criminal acts of domestic violence, the impacts include the following:

- 1) Causing psychological trauma and feelings of betrayal by the Defendant. The multiple unregistered marriage carried out by the Defendant without the permission of the legal wife caused psychological trauma because the legal wife who had always tried to be faithful in joy and sorrow was suddenly betrayed.

- 2) Decrease in welfare provided by the Defendant. The multiple unregistered marriage carried out by the perpetrator/defendant will directly cause the Defendant to reduce the maintenance for his legal wife to be given to his unregistered wife.
- 3) Disruption of the harmony of the Defendant and Ms. Suratemi's family which at a more complex level can result in a divorce lawsuit to the Supreme Court from both the Defendant and Ms. Suratemi as the legal wife and can give rise to new criminal acts such as domestic violence as regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

The impact on the joint property between the Defendant and Ms. Suratemi as the legal wife in the author's opinion does not exist, because the Defendant's marriage with Ms. Nur Khamida was carried out in a secret marriage and was not registered so that Ms. Nur Khamida as the secret wife cannot file a joint property lawsuit with the competent court.

5. Conclusion

5.1. Conclusion

Based on the discussion in the previous chapter and the research results obtained by the author, the following conclusions can be drawn:

1. Law enforcement against Indonesian Army soldiers who committed the crime of multiple marriages in the case study of Decision Number 108 K/MIL/2023.
Law enforcement is carried out by law enforcement officers in a Military Justice system regulated in Law Number 31 of 1997 concerning Military Justice starting from the Investigation and Prosecution process to the process of supervision and observation of the implementation of court decisions regulated in Articles 69 to 264. Law enforcement against Serka Adi Siswanto NRP 31940577450875 who was acquitted in Decision Number 108 K/MIL/2023 did not have a deterrent effect for the Defendant or for other TNI soldiers, besides that it also did not comply with the attention of the Supreme Court in SEMA Number 3 of 2015 and Article 3 of Perpang TNI Number 50 of 2014 concerning Procedures for Marriage, Divorce and Reconciliation for Soldiers, and Decree of the Chief of Army Staff Number Kep/496/VII/2015 dated July 27, 2015 concerning Technical Instructions for Procedures Marriage, Divorce and Reconciliation for Soldiers, where Indonesian Army soldiers are prohibited from having more than one wife or husband.
2. The impact of the Supreme Court Decision Number 108/K/MIL/2023 on law enforcement for Indonesian Army Soldiers includes:
 - a. Legal Impact
 - 1) The acquittal decision creates no legal legitimacy for the Defendant's unregistered marriage with Ms. Nur Khamida, both according to national law and Islamic religious law.
 - 2) The acquittal decision can be used as an Extraordinary Legal Remedy in the form of a Judicial Review (PK) by TNI soldiers who commit crimes similar to those of the Defendant but are convicted and dismissed from military service.
 - 3) The acquittal decision shows that law enforcement for perpetrators of multiple marriages within the TNI is inconsistent, because some perpetrators of multiple marriages are convicted, but on the other hand, there are perpetrators who are acquitted.
 - b. Impact on Institutions
The acquittal in the multiple marriage case has an impact on decreasing public trust in the law enforcement efforts that are being intensively carried out, has the potential to reduce the morale/work spirit of other members who have worked hard, creates new problems in the institution, namely other soldiers can commit similar acts to the Defendant because they assume that the Defendant is not punished, and also creates a negative stigma in society that assumes that soldiers who commit crimes will only be subject to disciplinary sanctions and will not be subject to criminal sanctions.
 - c. Impact on the Perpetrator/Defendant
 - d. The impact of the acquittal decision on the Defendant is that the Defendant cannot be prosecuted again (*Ne bis in idem*) in the same case, in addition, the decision can affect the Defendant's performance and discipline because Defendants who have multiple marriages usually have a life in their daily relationships in the unit and in society that is no longer calm

and tend to have many problems which can ultimately threaten the effectiveness of military operations at a more complex level.

e. Impact on the Family

1) Against the Secret Wife

The acquittal decision has an impact on the secret wife, who will not receive her rights as a wife, such as receiving joint property and also cannot file a lawsuit or lawsuit either criminally or civilly in court.

2) Against the Legal Wife

The acquittal decision has an impact on causing psychological trauma, and disrupting family harmony, and at a more complex level can result in divorce lawsuits which can lead to new criminal acts such as domestic violence.

5.2. Suggestions

Based on the conclusions above, the author can provide the following suggestions:

1. In order to ensure transparent law enforcement within the Indonesian Army, efforts made are to build synergistic coordination between the Supreme Court of the Republic of Indonesia which oversees the Military Court and law enforcement agencies within the TNI by committing to enforcing the law concretely and consistently because with a concrete and consistent commitment to law enforcement, the law will be upheld. In addition, routine and periodic meetings are also held between law enforcement agencies within the TNI whose time is adjusted to the needs to discuss the acceleration of the resolution of criminal cases or other cases which are carried out alternately as the organizers.
2. In order to minimize the occurrence of multiple marriage cases from recurring, TNI units, especially the Army, need to provide regular legal counseling focused on SEMA Number 3 of 2015 and Law Number 1 of 1974 concerning Marriage, Perpang Number 50 of 2014 and the Decree of the Chief of Army Staff Number Kep/496/VII/2015 dated July 27, 2015 regarding the legal and social impacts on perpetrators of multiple marriages and their families.

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