

# Legal analysis of disparity in military court judges' decisions faced with the principle of military interests

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## Article History

Received on 15 April 2025  
1<sup>st</sup> Revision on 29 April 2025  
Accepted on 2 May 2025

## Abstract

**Purpose:** The focus of the discussion in this study is the decision on crimes against morality committed by TNI soldiers.

**Research methodology:** The research method used is normative juridical which is carried out by analyzing various decisions related to crimes against morality committed by TNI soldiers and related laws and regulations.

**Results:** The verdict of the military court in cases of criminal acts of indecency committed by the TNI which were sentenced to prison sentences were relatively the same, ranging from five months to one year, but for additional penalties in the form of dismissal from the TNI service there was a disparity of 34% which caused legal uncertainty for every TNI soldier who committed a criminal act of indecency, especially with the penalty of dismissal from the TNI Service. The influencing factor on the judge's decision for additional criminal dismissal is related to military interests which state that the perpetrators of criminal acts of indecency are still needed by the TNI Institution and have an important role in supporting the main tasks of the TNI and there is no replacement who has the same ability as the perpetrators of criminal acts of indecency so that the judge's decision does not include the additional penalty of dismissal from the TNI service.

**Keywords:** *Decision, Disparity, Military Courts and the Principle of Military Interests*

**How to Cite:** Sasmito, G. W. (2024). Legal analysis of disparity in military court judges' decisions faced with the principle of military interests. *Annals of Justice and Humanity*, 3(2), 77-91.

## 1. Introduction

Disparity in the Great Dictionary of the Indonesian Language means difference or distance. Meanwhile, according to Muladi and Barda Nawawi Arief, "Criminal disparity is the application of different punishments to the same crime" (Muladi & Arief, 2010). Disparity will have a huge impact on the convict or victim of the disparity itself. Disparity in criminal decisions in Military Justice means that there is a significant difference in sentencing for violations that should be similar in the military justice system. In Military Justice, consistency in law enforcement is very important to ensure justice and discipline in the military. If there is disparity in criminal decisions, this can damage trust in the military legal system and create dissatisfaction among military personnel (Siagian, Riza, & Lubis, 2023; Zailani, Idham, & Erniyanti, 2023).

Meanwhile, the judicial power in the Indonesian National Army is in the Military Court. Based on Article 5 of Law No. 31 of 1997 concerning Military Justice, that military justice is the judicial power in the Armed Forces to enforce law and justice by paying attention to the implementation of national defense and security. The Military Courts applicable to military personnel have several levels. The first level is the Military Court which has the authority to examine and decide on criminal cases at the first level where the defendant is a TNI soldier with the rank of Captain or below (Ibid., Article 40). The second level is the High Military Court which has the authority to examine and decide on

criminal cases at the first level where the defendant is a TNI soldier with the rank of Major or above (Ibid., Article 41), as well as examine and decide on appeals for criminal cases that have been decided by the Military Court. The third level is the Main Military Court which has the authority to examine and decide on appeals for criminal cases that have been decided on the first level by the high military court (Ibid., Article 42).

Military Justice aims to enforce the law, maintain national security by ensuring that military personnel comply with established rules and procedures. Through military justice, the rights and welfare of military personnel can be protected. This includes the right to receive fair treatment in the legal process, as well as the right to protection from harassment, discrimination, or abuse of power within the armed forces. Military justice also aims to improve professionalism in law enforcement. Military Justice has been regulated in Law No. 31 of 1997 concerning military justice, which explains the general provisions, position and development and structure of court power (Ekawati & Yudoko, 2024; Harefa, Idham, & Erniyanti, 2023).

However, in reality, there are still many TNI soldiers who commit violations in carrying out their duties and obligations. Violations or actions carried out by TNI soldiers in any form, either individually or in groups, have violated legal provisions or other norms that apply in community life that are contrary to related regulations in the TNI environment which in essence can damage the image and good name of the TNI institution.

The TNI as the vanguard in maintaining the security and sovereignty of the state is the main foundation for national stability and security. However, behind its great responsibility, the TNI is also plagued by complex challenges, including cases of immoral violations involving TNI members. Immorality is an act or behavior that deviates from norms or rules of decency that tends to occur frequently in society. Immorality can include various actions such as pornography, sexual harassment, adultery, or sexual practices that are considered to deviate from values that are widely recognized in society. Immoral violations committed by TNI members are a serious problem that can tarnish the image of the state defense institution and damage public trust in the institution that should be the guardian of public security and welfare. Cases such as sexual harassment, distribution of pornographic content, or adultery involving TNI members will raise criticism and concern in society. Sometimes these immoral violations also raise questions about the quality of moral discipline within the TNI and the extent to which the defense institution can effectively manage and act on such cases and ensure that its members act in accordance with the values, morals, and ethics expected of a soldier. Understanding the causes and impacts of immoral violations involving TNI members is very important. An in-depth analysis will help identify the factors, risks that led to the occurrence of the violation (Alim, Triono, & Yudhi, 2023; Tarasari & Nasywa, 2021).

The absence of clear guidelines in determining punishment can give judges the freedom to determine the type, method of implementation, and level of objection to the punishment given to the perpetrator of the crime. This can result in differences in sentencing, even for similar offenses or crimes or have a similar level of danger, or what is often referred to as disparity in judges' decisions. However, this authority should not be interpreted as absolute freedom for judges to determine sentences according to their own wishes without considering certain standards or criteria. The authority of judges in sentencing must be based on objective and fair legal principles, and consider relevant factors. In sentencing, judges must pay attention to the principles of justice, propriety, and legal certainty in order to provide a deterrent effect on the perpetrator, restore justice for the victim, and prevent future violations of the law. In the military environment, the Principle of Military Interests is that the enforcers of Military Disciplinary Law are based on military interests for the implementation of national defense and security, military interests are prioritized over group and individual interests.

However, specifically in court, military interests are always balanced with legal interests. Based on the formulation of the background above, it is important for the author to conduct research with the **title "Legal Analysis of Disparities in Military Court Judges' Decisions Faced with the Principle of Military Interests"**.

### **1.1. Problem Formulation**

By looking at the background description above, the author can put forward the main problems, among others, as follows:

1. How is the decision on similar crimes, namely Criminal Acts of Morality, in military justice practices?
2. How is the Implementation of the Balance of Legal Certainty and Military Interests to prevent Criminal Disparities?

## **2. Literature Review**

### **2.1. Conceptual Framework**

#### *2.1.1. Analysis*

According to the Big Indonesian Dictionary, the definition of analysis is an investigation into an event (composition, action, etc.) to find out the actual situation (causes, facts of the case, or other things).

#### *2.1.2. Legal*

According to the Big Indonesian Dictionary, juridical comes from the Greek language which means according to law, legally meaning that everything related to juridical is considered valid and recognized by the judicial institution or other legal institutions.

#### *2.1.3. Court Decision*

A court decision is a decision taken by a judge by holding a closed and secret deliberation based on the indictment and everything that is proven during the examination at trial.

### **2.2. Definition of Criminal Disparity**

According to Barda Nawawi Arief, if the definition of criminalization is interpreted broadly as a process of giving or imposing a sentence by a judge, then the criminalization system includes all provisions of the legislation that regulate how criminal law is enforced or operationalized concretely so that someone is given a sanction (criminal law). This means that all laws and regulations regarding Substantive Criminal Law, Formal Criminal Law and Criminal Implementation Law can be seen as a single criminalization system (Muladi & Arief, 2010).

Disparity in the Big Indonesian Dictionary means difference or distance, in other words, disparity in the judge's legal considerations can be interpreted as variation or inconsistency in the legal analysis used by judges when deciding similar cases or when applying the same legal rules. This term describes a situation where judicial decisions show differences in the way judges interpret or apply the law, even though the context of the cases they handle is similar. Meanwhile, according to Muladi and Barda Nawawi Arief, "Disparity of sentencing is the application of unequal punishment to the same crime (same offense) or to crimes whose dangerous nature can be compared (offense of comparable seriousness) without a clear justification" (Muladi & Arief, 2010).

The independent and impartial character of judges is a universal principle in the justice system. The implementation of the justice system in Indonesia is carried out by judicial institutions through examinations in trials led by judges. In the criminal justice process, judges play an active role by asking questions and providing opportunities for defendants who can be represented by legal counsel to ask questions to witnesses, as well as to the public prosecutor, with the aim of obtaining material truth. The judge will determine the fate of the defendant through his decision because basically the judge is the one who exercises judicial power for the implementation of the judicial function properly (Dewantara, 1987).

The judge's decision is a crucial aspect in the implementation of the justice system. On the one hand, the judge's decision determines the fate of the accused by providing legal certainty regarding the status of the accused, whether found guilty or not guilty. However, on the other hand, the judge's decision is the crown and reflection of the values of justice, human rights, legal truth, and wisdom based on facts, ethics, mentality, and morality possessed by the judge. The difference in decisions

issued by judges on the same case is actually part of the judge's authority to decide a case based on applicable laws and conscience. Even though a case is charged with the same article, it does not mean that the punishment is also the same, considering that the background of the perpetrator, modus operandi, and victim can be different.

Based on the explanation above, it can be concluded that the disparity in military criminal justice is the difference in punishment for the same crime, which is carried out by judges based on their authority in deciding a case in order to carry out the judicial function. However, disparity will have a huge impact on the convict or victim of the disparity itself.

Criminal Disparity will have fatal consequences, after comparing the punishment then feeling like a victim of "The Judicial Caprice", will become a convict who does not respect the law, even though respect for the law is one of the targets in the purpose of punishment (Ibid, p.: 54). These legal experts do not view the disparity in criminal justice as a mistake or defect in the enforcement of criminal law in Indonesia. In relation to this, Oemar Seno Adji argues that, "disparity in punishment can be given to the punishment of rather severe crimes but the disparity in punishment must be accompanied by clear justification. Disparity in punishment can also be justified if it is reasonable or reasonable (Adji, 1985). The opinion of Oemar Seno Adji can be justified because to overcome the existence of the same crime does not mean having to equate the punishment to be imposed but the decision should have a rational reason or basis.

The view on disparity in criminal justice is a justification with the provision that disparity in punishment must be based on clear and justifiable reasons. This view is in line with the principle of the judge's freedom in making decisions on cases submitted to him. This view is also a form of reflection in which the judge in his efforts to maintain the authority of the law, must be able to account for the decisions produced by providing correct and reasonable reasons for the cases he examines. If this is applied logically, disparity in criminal justice will be acceptable to the parties concerned and the wider community.

### **2.3. Military Justice**

Military Courts are the executors of judicial power within the Armed Forces to uphold law and justice while taking into account the interests of organizing national defense and security (Ibid. Article 5). Military Courts are judicial institutions under military jurisdiction and are tasked with examining and deciding criminal cases committed by armed forces institutions. In Law Number 31 of 1997 concerning Military Courts, it is stated that Military Courts have the task of examining and deciding criminal cases committed by soldiers.

Military Courts are special courts for soldiers of the Indonesian National Army (TNI). Courts in this scope include Military Courts, High Military Courts, Main Military Courts, and Military Combat Courts (Ibid, Article 12). Military Courts are regulated in Law Number 31 of 1997 concerning Military Courts. This law regulates general provisions, court structure, prosecutorial powers, military criminal procedural law, Military Administrative procedural law, and other provisions.

The existence of Military Courts is very firmly stated that the differentiating criteria for determining the competence of Military Courts with other Courts is focused on the subject or perpetrator of the crime. In Law No. 4 of 2004 concerning Judicial Power, there are indeed no uniform differentiating criteria for the competence of the judicial bodies listed (General Courts, Military Courts, State Administrative Courts and Religious Courts). Some are based on the Subject (Military Courts) some are based on the type of case (State Administrative Courts) and some are based on cases or subjects (Religious Courts). By determining the subject of the perpetrator as the point of difference, the Military Court has the right to examine cases suspected of being committed by people who are subject to military law (Buaton, 2007 p. 71).

Thus it can be concluded that Military Justice is a judicial environment under the Supreme Court that exercises judicial power regarding crimes related to criminal acts committed by the military. In

general it can be said that general justice is not appropriate for trying criminal acts committed by soldiers. Military Courts are still needed to enforce military discipline standards because the military is considered a special community, which has special discipline, which risks its life to defend the sovereignty of the State. In addition, the principles of Military Justice, namely the principle of unity of command, the principle of commanders being responsible for their subordinates and the principle of military interests are principles that must exist in the military justice system in addition to the general principles contained in general justice.

#### ***2.4. Principle of Military Interest***

The Principle of Military Interest is that the law enforcers of Military Discipline are based on military interests to organize national defense (Agustinus & Prastopo, 2020). The Principle of Military Interest is a principle that places military needs and objectives as the main priority in policy making, strategy formulation, and implementation of activities related to national defense and security. Therefore, all actions taken by the military must aim to protect the integrity, sovereignty, and safety of the country from various threats, both internal and external.

Military interests require the achievement of the main task. It is possible that in the process of resolving cases, legal interests and military interests are not in line. In certain circumstances, military interests are prioritized over legal interests. For example, if a military person has expertise in military tactics and techniques that are impossible for other military in one unit to have, at some point the military is involved in a crime and must be resolved in court. At the same time, to support the success of his unit in carrying out tasks (operations). The role of the military is greatly needed by his unit. So for the sake of military interests, the process of resolving the criminal case he faced was not resolved in court. Legal interests will uphold the law sidelined by military interests.

##### ***2.4.1. Setting the Principle of Military Interests***

The explanation in Law Number 31 of 1997 concerning Military Justice states that the implementation of procedural law in military justice is guided by the principles stated in Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power, without ignoring the principles and characteristics of military life including the Principle of Military Interests, where in order to organize national defense and security, military interests are prioritized over group or individual interests. However, specifically in the judicial process, military interests are always balanced with legal interests.

Other legislation, regarding the term military interests is used in Humanitarian Law. One of the principles in humanitarian law is the principle of Military Necessity. This principle means that a disputing party (belligerent) is justified in using violence to subdue the opponent in order to achieve goals and success (Permatasari & Wibowo, 1999). It is easily interpreted as achieving the main task (Wibowo, 2014).

The main task of the TNI as stated in Article 7 of Law Number 34 of 2004 concerning the Indonesian National Army states, "The main task of the TNI is to secure the sovereignty of the state, maintain the integrity of the territory of the Republic of Indonesia based on the principles of Pancasila and the 1945 Constitution, and protect all citizens and all of Indonesia's diversity from threats and disturbances to the unity and integrity of the nation and state. The difference in understanding public interest and military interest is only in its scope, where military interest is limited in scope to the military environment, but in fact in terms of interest, military interest is also in the interests of the nation and state. In accordance with the principle of legality, the application of military interest in resolving military criminal cases must be made parameters so that subjectivity can be prevented, does not cause multiple interpretations and fraud in the abuse of authority.

### **3. Research Methodology**

#### ***3.1 Type of Research***

In this study, the author uses normative legal research, which includes research on legal principles, legal systematics, the level of legal synchronization, legal history and comparative law. In this study, data can be obtained through literature studies (Soekanto, 2024 p. 12).

### **3.2 Nature of Research**

The nature of the research used is descriptive analytical. Descriptive analytical is to obtain a picture and explanation of the research object. Furthermore, it is analyzed in accordance with the provisions of related laws, legal theories and expert opinions on the disparity of judges' decisions.

### **3.3 Data Analysis**

Data obtained from library research as supporting data for secondary legal materials supported by the opinions of sources are then processed using data analysis methods carried out using qualitative measures.

### **3.4 Drawing Conclusions.**

Drawing conclusions is done using deductive logic. This means that conclusions are drawn from general statements into specific statements. Conclusions are answers to the problems raised based on the results of tests and discussions convincingly so far as the research has been conducted.

### **3.5 Decisions on similar crimes, namely Crimes Against Morality, in military justice practice**

The principle of military interest is the principle underlying various decisions and actions in military justice. In particular, the principle of military interest serves to protect fundamental values related to the safety of the state. For example, in dealing with violations of the law committed by members of the military, the judge's decision often considers the broader impact on the military institution and the overall security situation. When violations of the law occur in a military environment, not only the individual perpetrator is affected, but also the image and credibility of the military institution as a whole.

Disparity in judges' decisions is the difference in the results of decisions taken by judges in cases that are faced with the same or similar legal issues. This phenomenon often occurs in military justice, where judges' decisions can vary depending on a number of factors. This disparity can cause problems in the consistency of law enforcement and reduce public trust in the military justice system. One of the main causes of disparity is the subjectivity of judges in assessing the facts.

Another factor that contributes to disparity in judges' decisions is pressure from the external environment such as public opinion, the military, and government policies. In the context of military justice, there is sometimes an expectation to uphold the image of the military, which can influence the decisions of judges. For example, in cases involving violations of the military code of conduct, judges may feel pressured to render less lenient decisions for military personnel than for civilians subject to the same law. This disparity affects not only the individuals who receive the verdicts but also the overall rule of law. The legal uncertainty that results from disparate verdicts can create doubts about the fairness of the justice system. The public may lose confidence in the legal system if they perceive that the verdicts of judges are inconsistent and unfair. In addition, legal uncertainty can hinder efforts to rehabilitate offenders based on similar cases. Cases that demonstrate marked disparities in judicial decisions can serve as a tool for evaluating and improving the military justice system. By analyzing different decisions in similar situations, we can identify the factors that cause these differences, and find solutions to ensure uniformity in law enforcement. A deeper understanding of disparities in judicial decisions is essential to creating a fairer and more transparent system.

### **3.6 Military Court Decisions for Criminal Offenses Similar to Indecency Cases With and Without Additional Penalties of Dismissal**

In general, determining military interests is done through an analysis of the context of the case. For example, in cases of disciplinary violations by TNI members, judges need to assess how much impact the violation has on the performance and morale of the unit concerned. If the violation has the

potential to disrupt operations or reduce the level of public trust in the military, then military interests can be considered threatened.

One concrete example of the application of this principle can be seen in a trial involving allegations of treason by a member of the military. In this case, the judge must carefully consider whether the act of treason is capable of harming the integrity and security of the state. This assessment includes consideration of its impact, both directly and indirectly, on defense institutions and national security policies.

In addition to analyzing the impact of the case being tried, judges must also assess the values contained in military interests, for example, loyalty, discipline, and national spirit. These values are very important in maintaining public trust in military institutions and maintaining stability within the armed forces. Thus, it can be concluded that determining military interests in a particular case is not just about assessing actions legally, but also considering the broader implications for national security and stability. This is a challenge not only for judges but also for the military legal system as a whole in order to enforce fair laws while still paying attention to military interests..

### ***3.7 Disparity in Criminal Decisions in Military Justice Practices***

The Military Criminal Code does not explicitly regulate the crime of immorality, but according to the Military Court Judge, the use of laws and regulations outside the Criminal Code to discuss cases of immorality is based on Article 2 of the Criminal Code which states that criminal provisions in the territory of the Republic of Indonesia apply to anyone who commits a crime in Indonesia (Pradwipta Brianaji, Robertus Bima et al, 2014 p. 9).

The imposition of a criminal sentence on a TNI soldier is basically more of an educational or coaching measure than an act of deterrence or retaliation, as long as the convict will be reactivated in military service after completing his sentence. However, the imposition of a criminal sentence on a TNI soldier in addition to serving a sentence is also subject to an additional penalty of dismissal from military service and after serving his sentence, the convict is removed from his membership as a TNI soldier. The imposition of a criminal sentence is the duty and authority of a judge and in the realm of the Military Court is usually called a Military Judge. Military Judges, High Military Judges, Main Military Judges hereinafter referred to as Judges are officials who each exercise judicial power in court.

In the development of immoral cases committed by TNI soldiers and those who have been sentenced by Military Judges, there are still many significant differences in terms of the imposition of criminal penalties of dismissal from military service. In the research of writing a thesis entitled Legal Analysis of Disparity of Military Court Judge Decisions Faced with the Principle of Military Interests, the author conducted research by collecting decisions related to immoral crimes committed by TNI Soldiers, namely violating Article 281 of the Criminal Code with different final decisions in terms of the imposition of additional criminal penalties of dismissal from military service against TNI Soldiers who commit immoral violations. With the existence of differences or Disparities in the imposition of additional criminal penalties of dismissal from military service, it is feared that it will influence the thinking and perspective of the community regarding the credibility of law enforcement in the realm of Military Justice.

The imposition of criminal penalties by judges is an important aspect in the implementation of the justice system. On the one hand, the judge's decision determines the fate of the defendant, namely by providing legal certainty regarding the status of the defendant being declared guilty or not, on the other hand, the judge's decision is the crown and reflection of the realization of the values of justice, human rights, truth, mastery of law, wisdom based on visual facts, ethics, mentality and morality that exist in the judge.

### ***3.8 Considerations of the Panel of Judges in the Practice of Military Court Decisions for Criminal Acts Similar to Moral Cases***

In Law Number 48 of 2009 concerning Judicial Power, it has been regulated and outlined that judges in carrying out their duties and functions are required to maintain judicial independence, therefore any interference in judicial affairs by other parties outside the judicial power is prohibited (Kuffal, 2012 p. 39). Efforts to maintain and preserve the independence of judges, then in the Law on Judicial Power in Article 5 paragraph (2) it has been emphasized that "Judges and Constitutional Judges must have integrity and personality that is beyond reproach, honest, fair, professional, and experienced in the legal field. In addition, in order to strengthen the souls and personalities of judges so that they can continue to internalize and practice the outlook on life of the Indonesian people based on Pancasila and the 1945 Constitution, then according to Law No. 48 of 2009 concerning Judicial Power in Article 5 paragraph (1) it states that "Judges and Constitutional Judges are required to explore, follow and understand the legal values and sense of justice that live in society (Ibid, Article 5 paragraph 1). This explains that the provision is intended so that the decisions of judges are in accordance with the law and the sense of justice of society. Judges must be able to provide decisions that are in accordance with the law and the sense of justice of society.

## 4. Results and Discussions

### 4.1 Analysis of Decisions on Criminal Acts Similar to Moral Cases in Military Justice Practices

In terms of legal norms, there are actually no specific regulations that provide guidelines on the prohibition of a court decision that results in disparity in sentencing. In fact, indirectly, there are several formulations that actually provide freedom and independence for judges or judicial power. This freedom and independence for judges or judicial power can actually provide judges with the flexibility to impose penalties or apply the law to cases being tried. Regulations regarding the freedom and independence of judges/judicial power can be found in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This article provides a legal basis for judicial power in Indonesia. The article states that judicial power is an independent power, which functions to organize trials with the aim of upholding law and justice.

The provisions in the articles that explicitly include the threat of heavier criminal penalties, whether in the form of the death penalty, life imprisonment, temporary imprisonment, or fines, are one concrete effort to increase the effectiveness of the implementation of criminal duties. With the threat of a heavier criminal penalty, it is expected to provide a deterrent effect to perpetrators of crimes and provide greater protection to the community. This is also in line with the principle of justice in applicable law, where every perpetrator of a crime must be responsible for their actions according to the level of seriousness and impact caused.

Military Justice also plays an important role in maintaining public trust in the military institution, by affirming that every member of the military must be held accountable for their actions under the law. This includes handling cases involving military crimes, such as treason, embezzlement, or violations of the laws of war. Thus, the Military Justice mechanism not only functions as an internal law enforcement tool, but also as a marker of public trust in the existence of a professional and responsible military institution.

That the difference in the imposition of criminal penalties/sentencing, in the same or similar cases, namely in this study specifically on crimes against morality according to the Criminal Code. The difference in the imposition of criminal penalties/sentencing mentioned in the judge's verdict, in cases of crimes against morality, which is the focus of this study is the difference in terms of additional penalties of dismissal, between one or several decisions that impose additional penalties of dismissal, with one or several decisions that do not add additional penalties of dismissal. Based on the findings of the research results, in similar criminal cases, namely cases of crimes against morality, the author took a sample of 11 (eleven) decisions on cases of crimes against morality, namely: in 7 (seven) cases the judge imposed an additional penalty of dismissal and in 4 (four) other cases the judge did not impose an additional penalty of dismissal.

Table 1. Data on Criminal Decisions for Indecent Crimes in Military Courts

Num	Decision	Classification	Criminal	Maximum	Criminal	Information
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		of Criminal Acts	Act Article	Criminal Threat	Verdict	
1	2	3	4	5	6	7
	<u>DILMIL III-12 SURABAYA</u>					
1.	75-K/PM.III-12/AD/IV/2022	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: Imprisonment for 9 (nine) months	Not Fired
2.	103-K/PM.III-12/AD/VIII/2022	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: Imprisonment for 7 (seven) months	
3.	167-K/PM.III-12/AL/XI/2022	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Additional Penalty: Dismissal from Military Service	Fired
4.	80-K/PM.III-12/AD/VII/2023	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: Imprisonment for 5 (five) months	Not Fired
	<u>DILMIL III-13 MADIUN</u>					
5.	20-K/PM.III-13/AD/VI/2023	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: Imprisonment for 8 (eight) months	Not Fired
	<u>DILMIL II-09 BANDUNG</u>					
6.	72-K/PM.II-09/AD/IV/2022	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: Imprisonment for 7 (seven) months and 10 days Additional Penalty: Dismissed from Military Service	Fired
7.	120-K/PM.II-09/AD/VIII/2022	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: Imprisonment for 9 (nine) months	Not Fired
8.	AMKHT-K/PM.II-09/AD/VII/2022	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: Imprisonment for 6 (six) months	Fired
9.	71-K/PM. II-09/AD/VI/2023	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: 8 (eight) months imprisonment	Not Fired

10.	75-K/PM.II-09/AD/VII/2023	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal Penalty: 7 (seven) months imprisonment	Fired
	<u>DILMIL III-14 DENPASAR</u>					
11.	12-K/PM.III-14/AD/V/2022	Immoral	281 KUHP	Maximum imprisonment of 2 (two) years and 4 (four) months	Principal sentence: 10 (ten) months	Not Fired

Based on the table above, it can be seen that the length of the prison sentence associated with those who were given the additional penalty of dismissal, and those who were not given the additional penalty of dismissal, turned out to vary, as illustrated as follows:

Table 2. Length of Principal Prison Sentence in Connection with Additional Sentence of Dismissal in the Moral Crimes.

Number	Length of Principal Prison Sentence	Additional Criminal Penalties	Information
1. (No. 2 Table)	7 Months	Fired	
2. (No. 6 Table)	7 Months 10 days	Fired	
3. (No. 8 Table)	6 Months	Fired	
4. (No 10 Table)	7 Months.	Fired	

Table 3. Length of Principal Prison Sentence in relation to No Additional Sentence of Dismissal in the Morality TP

Number	Length of Principal Prison Sentence	No Additional Penalties	Information
1. (No. 1 Table)	9 Months	Not Fired	
2. (No. 3 Table)	5 Months	Not Fired	
3. (No. 4 Table)	1 Year	Not Fired	
4. (No 5 Table)	8 Months.	Not Fired	
5. (No. 7 Table)	9 Months	Not Fired	
6. (No 9 Table)	8 Months	Not Fired	
7. (No 11 Table)	10 Months	Not Fired	

Based on Table 2 and Table 3, viewed from the length of imprisonment imposed by the judge in cases of crimes against morality, there is actually no disparity in sentencing, because it is still within a range that is not too different, namely the range, between: the lowest 5 months and the highest 1 year (12 months). While the rest are 6 months imprisonment for 1 case, 7 months imprisonment for 7 cases, 8 months imprisonment for 2 cases, 9 months imprisonment for 2 cases and 10 months imprisonment for 1 case.

However, when viewed from the additional penalty of dismissal, between those who were dismissed and those who were not dismissed, are: Additional penalty of Dismissal 4 cases (33%) and those who were not dismissed 7 cases (67%). The existence of a difference in additional penalty of dismissal and no dismissal in cases of similar crimes in cases of crimes against morality, with a percentage difference of 33% dismissed and 67% not dismissed, in fact cannot be classified into an opinion that there has been a disparity in sentencing.

The development of military law in Indonesia is important to ensure justice and legal certainty, especially in the context of military justice which often faces serious challenges such as disparity in judges' decisions. With a better understanding of military law and the principle of military interests, it

is hoped that judges can make more consistent and fair decisions. The next recommendation is the establishment of guidelines or standard operating procedures for judges in handling military cases. These guidelines will provide a clear and measurable reference for judges in making decisions, which is expected to reduce the potential for disparity. In addition, with this standard, it is hoped that better harmony can be achieved in resolving similar military cases. Furthermore, there needs to be stricter and more independent supervision of judges' decisions in military justice. This could be in the form of establishing a supervisory institution that has the authority to evaluate judges' decisions.

In addition, more intensive dialogue between various stakeholders, including the military, government, and civil society, is also very important. By involving various parties in discussing the issues faced by military justice, it is hoped that more comprehensive and inclusive solutions can be produced. In addition, this dialogue can also serve as a forum to educate the public about the importance of justice in the military legal system. Finally, it is important to conduct regular evaluations of the existing military legal system. Through this evaluation, authorities can identify problems and make necessary improvements quickly. Good evaluations will help adjust military law to the development of community needs and changing situations on the ground.

#### ***4.2 Analysis of Judges' Considerations in the Perspective of Legal Certainty and Military Interests in Connection with Criminal Disparities***

Analysis of the judge's considerations in the verdict of the Military Judge/Court, is intended to provide an illustration that, even if there is a difference in sentencing, or more precisely there is a difference in the verdict of the military judge, in the same or relatively the same or similar cases, for example in cases of criminal acts of morality, some are dismissed and some are not dismissed. It cannot be seen solely from the aspect of the inequality of the verdict, or the difference in the verdict in the same case, namely in the criminal act of morality, as a Disparity in Sentencing.

For example, when there are two or several cases of criminal acts of morality, one or some of which is sentenced to a principal sentence of imprisonment and an additional sentence of dismissal, while there is one or several cases of criminal acts of morality that are not sentenced to an additional sentence of dismissal, this kind of thing or this different condition, cannot be seen solely as a form of disparity in sentencing.

That is why in this study, the question is, the balance between legal certainty and military interests regarding military court decisions in cases of crimes against morality:

The Legal Certainty Aspect, emphasizes more on the obligation for judges in cases of crimes against morality, to impose additional punishment in the form of dismissal, as a manifestation of the creation of Legal Certainty as mandated in the TNI Regulation/TNI Commander's Telegram Letter, that for cases of morality involving KBT, additional punishment in the form of dismissal must be imposed.

In terms of Military Interests, in cases of indecency crimes, there are several cases where military judges/courts do not impose additional penalties of dismissal on perpetrators of indecency crimes. Although not guided by the TNI Commander's Telegram Letter, they consider military interests, unit interests, and military task interests, which still require military/soldier expertise from the perpetrators of indecency crimes.

If related to the purpose of criminalization according to Gustaf Radbruch, in this case, it prioritizes the aspect of the Benefit objective, namely the benefit for the interests of the unit, the interest in achieving tasks, and military interests, by placing the Legal Certainty aspect and the Justice Aspect as the next objective. Gustaf Radbruch himself provides the flexibility to place the priority scale of the three legal objectives, whether the objective of justice, the objective of legal certainty or the objective of benefit as the main objective, adjusted to the circumstances and situations faced.

The principle of military interest is one of the basic principles that is firmly held in the military justice system. This principle is important to maintain the stability and security of the state, as well as to enforce the law effectively in a military environment. The implementation of the principle of military

interests in judicial practice is very important so that the laws applied can accommodate the needs and dynamics in the field. This means that every case faced by military justice must be evaluated and analyzed by considering its impact on national interests and security.

In applying the principle of military interest, judges in military courts need to have a deep understanding of the existing situation. They must be able to assess the situation comprehensively and consider all relevant aspects. In addition, the involvement of authorized parties such as the commander is also needed to provide a broader perspective on the case at hand. This is an important step to ensure that the decisions taken are not only fair, but also in accordance with the interests of national defense and security. Thus, understanding and implementing the principle of military interest correctly not only contributes to achieving justice in every decision, but also strengthens public trust in military justice institutions. Efforts to balance individual interests and common interests are challenges that must be faced by all elements in military justice. This balance will result in wiser and fairer decisions, and support the stability and security of the country as a whole.

#### *4.2.1 Analysis of the Implementation of Military Interests Linked to Legal Certainty*

The implementation of military interests in judicial decisions often poses challenges in maintaining legal certainty. Military interests, which include aspects such as discipline, morale, and operational readiness, must be integrated with the principles of justice and applicable law. Military judges are required to issue decisions that are not only in accordance with the law but also support military interests. Legal certainty is a basic principle that must be maintained in every legal decision. However, in military justice, legal certainty must be balanced with the need to maintain discipline and military operational interests. Decisions that are too light can damage discipline and morale among soldiers, while decisions that are too heavy can be considered unfair and cause dissatisfaction. To achieve this balance, military judges must rely on guidelines and policies that have been established by military authorities. These guidelines assist judges in determining appropriate sentences that are consistent with military objectives. In addition, ongoing training for military judges is essential to ensure that they have a good understanding of how to balance legal certainty with military interests.

#### *4.2.2 Analysis of Disparity in Judges' Decisions*

Disparity in judges' decisions in military courts is an important issue to analyze. Disparity in decisions can have an impact on the image and credibility of military courts themselves. In addition, it can also affect public trust in the existing legal system. Therefore, it is important to explore the factors that can cause this disparity and its impact on law enforcement. Disparity in decisions does not only occur in military court cases, but also in various other types of courts. However, in the military context, factors related to military interests and the characteristics of the cases involved often make this analysis more complex. It is important to understand how decisions made by judges can vary even though the cases appear similar on the surface.

One key aspect in this analysis is the difference in interpretation of the law by judges. Each judge has a different background, experience, and understanding of the law. This can lead to differences in the way they interpret the law and apply it to the facts at hand. In addition, it is not uncommon for judges to be influenced by personal views or biases that can influence their decisions. The consequences of this disparity in decisions can be far-reaching. For example, if two cases with similar facts result in very different verdicts, this can create a sense of injustice among the individuals involved, including the accused and the general public. In addition, disparity in verdicts can create legal uncertainty, where individuals and agencies cannot predict the outcome of similar cases in the future. This uncertainty will certainly affect how society complies with the law.

Another aspect that needs to be considered is the relationship between military interests and justice. In many cases, consideration of military interests can influence a judge's decision. For example, in cases involving military personnel who commit violations, it is likely that the judge will consider the impact of the verdict on military discipline and morality. However, on the other hand, there must be a balance between fulfilling military interests and ensuring that the principle of justice is not neglected. In this context, it is important for legal agencies to continue to evaluate the decisions taken by judges in

military courts. With efforts to understand and reduce disparities in verdicts, it is hoped that in the future, military courts will be fairer and have higher credibility in the eyes of the public.

Disparities in military court decisions can have a significant impact on law enforcement in Indonesia. This situation not only affects justice for individuals involved in certain cases, but also has implications for the image of military justice as a whole. First, disparities in decisions can lead to legal uncertainty. When judges in military courts give different decisions for similar cases, this creates confusion among soldiers and the public. They have difficulty understanding the applicable legal boundaries and standards. This uncertainty can cause soldiers to feel insecure and distrustful of the justice system, so they may hesitate to report violations or crimes they witness. Second, the impact of disparities on law enforcement can result in injustice. For example, soldiers who face the same case but are tried by different judges may receive different sentences.

This can create the impression of unfair treatment and bias in the justice system. This injustice not only harms the parties involved, but also reduces public trust in the integrity of military justice. Third, disparities in decisions can worsen relations between the military and civilians. If the public perceives that the sentences handed down by military judges are inconsistent or unfair, they may lose confidence in the military as a law enforcement agency. This may lead to increased tensions and conflicts between the military and the public, which in turn may affect national stability. Fourth, disparities in judicial decisions may also hinder efforts to train soldiers. When soldiers see that certain offenses are not always punished in the same way, they may not feel motivated to comply with existing norms and regulations. This can lead to disciplinary problems within the armed forces and can affect their operational effectiveness. Overall, the impact of disparities on law enforcement in military justice is serious. Therefore, it is important for the justice system to work to reduce disparities in decisions through training judges, enforcing consistent standards, and more comprehensive legal system improvements.

The relationship between military interests and justice can be seen from how these two aspects influence each other in a legal decision. The decision taken must pay attention to national security without sacrificing the principles of justice. For example, in cases of violations involving military personnel serving in high-risk situations, the judge's decision must consider the conditions and reasons underlying the action. One of the challenges faced is the attitude of the military law enforcement officers themselves. There are times when support for military interests can obscure the values of justice.

In situations like this, judges are expected to be objective and independent, which means they must be able to separate military interests from human rights violations. Ensuring that decisions taken are not only based on institutional interests, but also consider the impact on the individual defendant is key to achieving balanced justice. In addition, it is also important to create transparency in the military legal process. Publication of decisions and the reasons behind them can increase accountability, so that the public can understand how military interests and justice are applied. With transparency, it is hoped that it will reduce public distrust of the military justice system.

In order to ensure a harmonious relationship between military interests and justice, there needs to be strict internal supervision and training for judges. They need to be prepared to handle cases involving violations of the law wisely and without bias. Only in this way can the military justice system function effectively while upholding the values of justice.

## **5. Conclusion**

### **5.1. Conclusion**

There is a Difference in the Judge's verdict in the TP case similar to Morality, namely 33% were dismissed and 67% were not dismissed, but when viewed from the length of the prison sentence, those sentenced to dismissal and those not dismissed are relatively the same, ranging from 6 months to 7 months, 10 days dismissed and 5 months to 1 year for those not dismissed, so that the range of prison sentences as a basis for relative authority does not occur disparity. However, when viewed from the

difference in additional sentences for dismissal and those not dismissed, it shows a disparity. 2. Disparity in sentencing in cases similar to Moral Crimes, the percentage of which is 67% not dismissed and 33% dismissed. When viewed from the judge's considerations, the additional sentence for dismissal is based on legal certainty, namely from the Commander's Decree Number TR/278/2016 dated August 12, 2016, while for those not dismissed, it is based on military interests considered by the panel of judges considering aspects of legal benefits that lead to military interests, including the defendant's actions not being followed by other soldiers.

## 5.2. Suggestions

Military justice plays an important role in maintaining order and justice in the military environment. The hope for military justice in the future is that this justice system can be more transparent, fair, and responsive to legal developments and the needs of society. One of the main hopes is the creation of equality before the law, both for military members and civilians. In this context, it is important to prioritize the application of the principle of military interests while still paying attention to human rights aspects. This hope includes reforms in the decision-making process, so that judges' decisions are not only guided by existing regulations but also understand the social context and values of justice that apply in society.

1. Advice to law enforcers in the TNI environment or military courts regarding similar TP, especially TP on morality that will be subject to additional punishment of dismissal, in addition to considering the elements of TP on morality, consider things that eliminate and are aggravating, also consider the Commander's ST to maintain legal certainty
2. To Judges who examine and try similar TP cases in this case TP on morality, it is suggested to consider military interests, including the interests of discipline development, personnel development and unit development so that in special circumstances while still paying attention to the balance of legal interests and military interests, it is still possible not to be dismissed.

Finally, expectations for military justice are also related to social responsibility. In facing changing times and global challenges, the military needs to demonstrate its commitment to the principles of justice and transparency. Law enforcement based on ethics and morality will support efforts to create a safer and more harmonious environment for all parties. With these steps, military justice is expected to fulfill its functions and roles optimally, so that justice can be realized in every aspect of military life, and respect individual rights without neglecting the collective interests of the military.

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