

Legal analysis of the provisions prohibiting marriage between female soldiers and male soldiers of lower rank in gender equality

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Abstract

Purpose: This study analyzes the provisions prohibiting marriage for female soldiers with male soldiers of lower rank in the context of gender equality and human rights.

Research methodology: The regulation is contained in Perpang No. 50 of 2014 and several other technical instructions in the TNI environment, a comparison with flexible Polri regulations that prioritize the principle of justice without discrimination.

Results: Through a normative legal approach, this study found that this prohibition is contrary to various national and international legal instruments, such as the 1945 Constitution, Compilation of Islamic Law, Law Number 1 of 1974 concerning Marriage, Law Number 39 of 1999 concerning Human Rights, UDHR, ICCPR and CEDAW. The prohibition not only creates injustice but also affects the morale and welfare of soldiers.

Keywords: *Marriage, Gender Equality, Human Rights*

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1. Introduction

The marriage regulations provide a clear legal basis for marriage in Indonesia, the 1945 Constitution as the country's constitution, provides a basis for protecting the rights of individuals to form a family through a legal marriage, as well as Law Number 1 of 1974 concerning Marriage provides a general framework for marriage that applies to all citizens, while the Compilation of Islamic Law (KHI) provides specific guidance for those who adhere to Islam. Although there are some differences in procedures, the main goal is to protect the rights and obligations of each party in marriage in accordance with the values recognized by Indonesian society and the state.

The Republic of Indonesia has guaranteed the freedom of its citizens to choose their partners to form a family. This is stated in the Human Rights Law in Article 10 which states:

1. Everyone has the right to form a family and continue their descendants through a legal marriage.
2. A legal marriage can only take place based on the free will of the prospective husband and wife concerned in accordance with the provisions of laws and regulations.

Gender equality is a situation where men and women have the same opportunities and rights as human beings, so that they can participate in various political, economic, socio-cultural activities, as well as national defense and security, and can enjoy the results of development equally. In the life of the TNI regarding marriage matters, there are special rules regulated in the TNI Commander Regulation Number 50 of 2014 concerning the procedures for marriage, divorce and reconciliation for TNI soldiers. With the ratification of this regulation, it has implications for the Kasad Decree Number/496/XII/2015 dated July 27, 2015 which regulates technical instructions on the procedures for marriage, divorce and reconciliation for TNI Army soldiers, Perkasa No. 29 of 2022 which regulates the procedures for marriage, divorce and reconciliation for TNI Navy soldiers and Perkasa No. 26 of 2016 which regulates the procedures for marriage, divorce and reconciliation for TNI Air

Force soldiers. These TNI soldier marriage regulations provide an overview and explanation that aims to serve as a guideline for authorized officials, religious officials, personnel officials, authorized superiors, courts and authorized institutions in the ranks of the TNI Army, Navy and Air Force regarding the management of marriage, divorce and reconciliation for TNI soldiers.

The above regulations in principle also apply to female TNI soldiers who want to get married, however, in the lives of female soldiers there are special rules and guidelines in the Technical Instructions on the Development of the Indonesian Army Women's Corps Number Kep/1022/XII/2016 dated December 14, 2016, Technical Instructions on the Development of the Indonesian Navy Women's Corps: Perkasal No. 31 of 2021 dated August 20, 2021 and Technical Instructions on the Development of Women in the Air Force: Kep Kasau No. 350/XI2020 dated December 17, 2021.

The provisions regarding the requirements for submitting administrative applications for marriage for prospective husbands of female soldiers have differences, that basically female soldiers, both land, sea and air, are Indonesian National Army agencies tasked with upholding state sovereignty, defending the integrity of the territory of the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia (ardiyansyah & Nazaruddin, 2024; Ramadhani. D, Shafira, Dewi, Jatmiko, & Warganegara, 2024).

The prohibition of marriage for female soldiers who want to marry male soldiers of lower rank is found in Article 5 paragraph 2 of the Regulation of the Commander of the Indonesian National Armed Forces Number 50 of 2014 which regulates the procedures for marriage, divorce and reconciliation for TNI soldiers, stating that female soldiers are prohibited from marrying male soldiers of lower rank (Bustomi, 2023).

Thus, this regulation provides limitations for female soldiers to choose a prospective husband or life partner according to their wishes, while every person, both male and female, who is an adult has the right to form a family and continue their descendants through a legal marriage based on the free will of the prospective husband and wife which is guaranteed by laws and regulations. Based on the description above, the author is interested in raising this research with the title **“Legal Analysis of Provisions on the Prohibition of Marriage of Female Soldiers with Male Soldiers of Lower Rank in Gender Equality”**.

1.1. Problem Formulation

Based on the description of the background above, the main issues in this case are as follows:

1. What are the provisions prohibiting marriage for female soldiers with male soldiers of lower rank?
2. How can the provisions prohibiting marriage for female soldiers with male soldiers of lower rank be updated in the future (*Ius constituendum*)?

2. Literature Review

2.1 Theoretical Framework

2.1.1 Theory of Justice

Aristotle as quoted by Muchsin taught two kinds of justice, namely distributive justice and commutative justice. While other legal experts divide this justice into several parts, namely distributive, commutative, vindicative, creative, protective, and legalist (Muchsin, 2005).

Distributive Justice is justice that gives everyone a portion according to their quota, while commutative justice is justice that gives everyone an equal share without having to remember individual services. Vindicative Justice is justice that gives rewards or laws to one or more people according to the mistakes they make.

Creative Justice is justice that provides protection to someone who is considered creative in producing their creative work. Protective Justice is justice that provides assistance and protection to every human being so that no one can be treated arbitrarily. Legal Justice is justice that the Law wants to create.

2.1.2 Gender Equality Theory

Gender equality and justice according to the perspective of Edward Wilson from Hardwar University (1975) is divided into two streams, namely the concept of nurture (cultural construction) and the concept of nature (natural) then another group is known as equilibrium (balance). The following is an explanation of the theory of gender equality (Pratiwi, Dewi, Widnyani, & Rahayu, 2023; Sundari, 2009).

2.2 Definition of marriage

Marriage is an act of God's creatures to reproduce in the world. This does not only happen to humans, but also to plants and animals. According to Article 1 of Law Number 1 of 1974 concerning Marriage, it states that 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 (Hadikusuma, 2007; Riza, 2023).

The Marriage Law states that a marriage is valid if it is carried out according to the laws of each religion and belief (Article 2 paragraph 1). From the text of Article 2 paragraph 1 along with its explanation, it is clear that a marriage must absolutely be carried out according to the laws of each religion and belief, otherwise the marriage is invalid.

2.3 Gender Justice and Equality

2.3.1 Gender Equality

Etymologically, the word gender comes from the English word 'gender' which means sex (Marzuki, 2020; Putri, Respationo, Erniyanti, & Parameshwara, 2022). In line with the view expressed by Siti Musdah Mulia who emphasized that gender is a set of attitudes, roles, responsibilities, functions, rights, and also behaviors that are inherent in men and women due to the formation of culture or the social environment where humans grow and are raised. Furthermore, she added that gender is a concept that refers to the roles and responsibilities of men and women as a result of social construction that can be changed according to the development and changes of the modern era.

Gender equality is the equality of conditions for men and women to obtain opportunities and rights as human beings and have the same potential to contribute to national, political, economic, social, and cultural development. The existence of gender equality between men and women is marked by the absence of discrimination in obtaining access, opportunities to participate, and control over development and obtaining equal and fair benefits from development. Achieving gender equality in all fields can also increase productivity, economic growth, and overall development efficiency (Agusalim, Sulistiyowati, & Amalia, 2023; Idham et al., 2023).

Gender equality is equal treatment for men and women in the same conditions in obtaining opportunities, involvement or participation and decision-making as well as accessibility to development and welfare benefits. Gender equality is the same conditions for men and women to obtain opportunities and their rights as human beings, so that they are able to play a role and participate in political, economic, socio-cultural, national defense and security activities and equality in enjoying the results of this development (INPRES Number 9 of 2000).

2.3.2 Gender Equity

Gender justice is a process to obtain a fair position, role or status for men and women. To achieve gender justice, it is done by treating men and women equally or differently based on their respective needs. Gender justice is a process to be fair to men and women (Presidential Instruction Number 9 of 2000).

Gender justice is a fair condition for women and men to be able to actualize and dedicate themselves to the development of the nation and state. Gender justice and equality are based on principles that position men and women equally as: servants of God (their capacity as servants, men and women will each receive awards from God according to their devotion (Sastrawati, 2018).

3. Research Methodology

3.1 Type of Research

In this research, the author uses a descriptive analytical normative legal research type, namely a scientific activity based on a systematic method and certain thoughts that aim to study one or several specific legal phenomena by analyzing them. In addition, it also conducts an in-depth examination of the legal facts, to then attempt a solution or problem that arises in the legal phenomenon (Soekanto, 2006).

3.2 Legal materials

The legal sources used in this research are primary legal materials, namely binding legal materials and consisting of interviews with several sources/agencies and secondary legal materials, including official documents, books and research results in the form of reports, diaries and so on.

3.3 Legal Material Analysis

In this study, the author uses normative qualitative analysis. What is meant by qualitative method is a research procedure that produces descriptive-analytical legal materials, namely stated by respondents in writing or verbally and also real behavior, which is researched and studied as something whole (Soekanto, 2006). Then it is concluded in order to formulate the conclusions of this study.

3.4 Drawing Conclusions

The conclusion is drawn using Deductive Logic, namely by drawing specific conclusions from general questions (Gultom et.al 2000). This method is carried out by analyzing general understandings or theories related to Marriage, Gender Equality and Human Rights.

4. Results and Discussions

4.1 Marriage Provisions in the TNI Environment

4.1.1 Regulation of the Minister of Defense of the Republic of Indonesia Number 31 of 2017 concerning Marriage, Divorce, and Reconciliation for Employees within the Ministry of Defense

Marriages within the Ministry of Defense include civil servants and TNI soldiers who serve in the Ministry of Defense, in principle, Kemhan employees are only allowed to have 1 (one) wife and female Kemhan employees are only allowed to have 1 (one) husband. Kemhan employees, both civil servants and TNI soldiers who will carry out marriages in accordance with the provisions of their religion, namely Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism, carrying out marriages must be officially registered at the Population and Civil Registry Office, and specifically for Muslims, carrying out marriages must be officially registered at the Religious Affairs Office. In addition, they must obtain a marriage permit from an authorized official, carried out by submitting a written application for a marriage permit.

Female soldiers are prohibited from carrying out marriages with male soldiers of lower rank. Based on these rights, violations of the provisions of this Commander's Regulation are violations of military disciplinary law and are subject to military disciplinary punishment followed by administrative sanctions. Specifically, soldiers who violate the provisions referred to in Article 5 of Perpang 50 of 2014 in the case of female soldiers carrying out marriages with male soldiers of lower rank can be dismissed from TNI service. Thus, the sentence can be dismissed from TNI service who violate Article 5 paragraph 2, the word "can" is a relative word meaning dismissed or not dismissed from TNI service, therefore there needs to be firmness in order to have legal certainty.

This marriage administration is carried out by male soldiers of the Indonesian Army and female soldiers of the Indonesian Army, for soldiers to determine a prospective partner or husband has provisions from this regulation as stated "Female soldiers are prohibited from carrying out marriages with male soldiers of lower rank". Every Indonesian Army soldier who wishes to carry out a marriage must first submit a written request for permission to the Unit Commander or authorized superior in their respective units and receive instructions and guidance in the marriage to be carried out. Based on this, violations of these technical instructions are violations of military disciplinary law which are threatened with administrative sanctions which can be dismissed or expelled from the Indonesian Army service.

4.2 Legal Analysis of the Provisions Prohibiting Marriage of Female Soldiers with Male Soldiers of Lower Rank in Gender Equality

In determining prospective husbands for female TNI soldiers, there is a lack of uniformity in the policy for Kowad soldiers, they are not allowed to marry male soldiers who are lower in rank, then for Kowal soldiers, they are prohibited from marrying male soldiers who are lower in rank, as well as for Polri who are lower in rank. Furthermore, for Wara soldiers, they are prohibited from marrying male soldiers who are lower in rank, as well as for Polri and PNS who are lower in rank. This shows a discrepancy with the level of horizontal synchronization.

Based on the principles of human rights, every individual has the right to marry without discrimination. Gender equality affirms that both men and women have the same right to marry, even though the rank of female soldiers is higher than that of male soldiers. In this context, it is important to recognize the legal basis governing human rights in Indonesia, such as the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, ICCPR, UDHR, and ratification of laws in force in Indonesia.

Human rights are rights inherent in every individual, including the right to marry without discrimination based on gender. The principles of human rights emphasize the importance of protecting individual rights and equal freedoms for all people, regardless of gender. Therefore, in the context of marriage regulations for TNI soldiers, it is important to ensure that the policies implemented do not conflict with human rights principles.

However, it should be noted that in the context of applicable laws and regulations, there are provisions that regulate marriage between female soldiers and male soldiers of lower rank. This indicates a mismatch between the policies implemented and the principles of human rights. In an effort to achieve true gender equality, it is important to pay attention to and review policies that may limit individual rights based on gender. In this context, it is necessary to evaluate existing regulations, taking into account the principles of human rights and gender equality.

Efforts that can be made in terms of realizing a fair and non-discriminatory marriage are through dialogue and discussion involving various related parties, including the TNI institution, to reach an agreement that respects individual rights without discrimination. It is important to recognize that human rights guarantee gender equality and the right to marry without discrimination.

In the marriage regulations for TNI soldiers, it is necessary to evaluate and review policies that may conflict with the principles of human rights. Thus, it is hoped that there can be a match between the policies implemented and the principles of universally recognized human rights.

4.3 Analysis of Marriage Provisions in the Indonesian National Police

The marriage regulations in the Indonesian National Police show that the institution has implemented the principles of justice and non-discrimination by not limiting marriage based on rank between female police officers and male police officers, TNI officers, or civil servants. This approach is in line with human rights values as guaranteed by the 1945 Constitution and international legal instruments such as the UDHR, ICCPR, and CEDAW which emphasize gender equality and the elimination of discrimination in all aspects of life, including marriage. The Indonesian National Police demonstrates

a strong commitment to social justice, creating a work environment that supports equality and personal integrity. This regulation not only strengthens harmony in the personal lives of members, but also improves morale by showing that every member is valued and treated fairly regardless of their rank. Therefore, in the TNI regulations regarding marriage procedures which still apply marriage restrictions based on rank, there is a need to revise and modernize its policies to accommodate the principles of gender equality and non-discrimination.

The TNI can learn from the Indonesian National Police by removing restrictions that affect marriage based on rank or employment status, which will:

- a. Strengthening integrity and professionalism within the TNI by demonstrating that the institution operates based on the principle of justice.
- b. Improving the welfare of TNI members as an institution that is in accordance with human rights values, strengthening the image and reputation of the TNI both domestically and internationally.

By adopting more inclusive and equitable marriage regulations, the TNI will not only support the welfare of its members but will also strengthen the legal and ethical foundations that underlie its operations and administration. This approach will indirectly increase operational effectiveness. Thus, the TNI in its marriage regulations follows in the footsteps of the Polri in implementing the principles of justice and non-discrimination. The universal norms contained therein are in the form of the right to marry, which is the most natural, most essential right which is a right given by God Almighty, while the implementation of marriage itself is fully regulated and must be subject to the national legislation of each country, namely in Law Number 1 of . In essence, human rights provisions are present to strengthen the implementation of religious teachings. This is because there is no religious teaching that degrades human values, including in the regulation of marriage. Thus, the author of the regulation of a TNI soldier who prohibits those in Indonesia and is also not in accordance with the personality of the Indonesian nation which upholds the dignity and dignity of every human being, especially in carrying out their life functions as a human being to carry out their social functions, namely carrying out marriage or carrying out household functions in order to have offspring.

4.4 Interview results regarding the Legal Provisions Prohibiting Marriage of Female Soldiers with Male Soldiers of Lower Rank in Gender Equality

- a. Mayor Chk Sator Sapan Bungin, S.H., M.H. Head of Pamperslog STHM Ditkumad and Assistant Lecturer of Human Rights Law, delivered the interview answer on Monday, July 1, 2024 at 08.30 WIB as follows:
 - 1) I view this regulation as a form of discrimination that is not in line with the principles of gender equality and human rights. Every individual should have the right to choose their life partner without being limited by rank or position. This regulation should be reviewed to ensure that the TNI complies with internationally and nationally recognized human rights standards.
 - 2) The main reason behind the differences in these regulations seems to come from the internal policies of each unit that may consider operational factors. However, in the regulation regarding the prohibition of marriage between female soldiers and male soldiers of lower rank, there is no explanation or transparent reason, considering that the technical manual for the development of Kowad, Kowal and Wara used is horizontally aligned. This shows an inconsistency that needs to be further evaluated.
 - 3) The inconsistency of this regulation can have a negative impact on the morale and motivation of soldiers. They feel treated unfairly and restricted in their personal lives, this regulation can also create psychological stress and disrupt the balance between personal life and performance. Looking at the family life of female soldiers with male soldiers, who have been married there are female soldiers who are higher in rank, but it does not affect the professionalism of the TNI. Therefore, it is very important to respect the individual's right to make personal decisions, including in matters of marriage. Policies that discriminate based on rank not only create injustice but also affect the morale and welfare of TNI soldiers.
 - 4) Synchronization of these regulations with higher laws and other technical instructions is still inadequate. Although there have been some efforts to align regulations with human rights and gender equality standards, their implementation has not been consistent. Efforts are needed to

ensure that all internal TNI regulations are in line with National and International Laws. With the types and hierarchies of Laws and Regulations in Law No. 12 of 2011 that must be followed. Based on this, an open and comprehensive dialogue is needed between all relevant parties to reach an agreement that upholds the principle of justice in terms of marriage. Related policy regulations need to be updated and synchronized. Such as Permenhan No. 31 of 2017 concerning marriage, divorce, and reconciliation for employees in the Ministry of Defense Environment, which previously Permenhan 23 of 2008 did not prohibit marriage between rank groups. Meanwhile, Perpang TNI No. 50 of 2014 concerning procedures for marriage, divorce and reconciliation for soldiers, which previously Perpang TNI No. 11 of 2007 also did not prohibit marriage between rank groups. In addition, the formation of future regulations must consider and remember related regulations. 5) Comparison with the Indonesian National Police shows that more flexible regulations that respect human rights can be implemented without disrupting organizational performance. The Indonesian National Police does not prohibit marriage between ranks, which reflects the Indonesian National Police's commitment to gender equality and justice. Indonesian National Police Regulation No. 6 of 2018 concerning amendments to Indonesian National Police Regulation No. 9 of 2010 concerning procedures for submitting marriage, divorce, and reconciliation for civil servants at the Indonesian National Police in article 2 states that the principles in this regulation include justice, namely that every marriage submission process is carried out fairly without discrimination. Therefore, the TNI can approach and consider revising regulations to better respect human rights and gender equality, while maintaining discipline and professionalism within the unit.

4.5 Protection of marriage in human rights in national law

4.5.1 The 1945 Constitution (UUD 1945)

The Basic Law is a written law as a state constitution that is needed to regulate the mechanism of the running of a country's government. On the other hand, if a country does not have a Basic Law (Constitution), it is certain that there will be oppression of human rights. Article 28 B paragraph 1 of the 1945 Constitution, the second amendment states: "Everyone has the right to form a family and continue their descendants through a legal marriage". A legal marriage means that it has met the requirements that have been determined both in religious law and in national law, namely statutory regulations. Referring to the text of Article 28 paragraph 1 of the 1945 Constitution, the regulation prohibiting female soldiers from marrying male soldiers of lower rank as regulated in Article 5 paragraph (2) of Perpang No. 50 of 2014 is contrary to the basic rights regulated in the constitution.

4.5.2 Regulations regarding marriage have been regulated in Law Number 1 of 1974 concerning Marriage

Law No. 1 of 1974 concerning Marriage emphasizes that 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 based on the Almighty God as reflected in Article 1. In addition, Article 2 states that a marriage is valid if it is carried out according to the laws of each religion and its beliefs, indicating the importance of religious validation in marriage. Furthermore, Article 6 paragraph (1) emphasizes that marriage must be based on the consent of both parties who will enter into marriage. This emphasizes the freedom of individuals to determine their life partners. Thus, the regulation prohibiting female TNI soldiers from marrying male soldiers of lower rank appears to be contrary to the principles of freedom and consent guaranteed by the Law, so it needs to be reviewed so that it is in line with the protection of human rights.

4.5.3 Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law

The Republic of Indonesia also has a Compilation of Islamic Law (KHI) which is an implementation of Presidential Instruction of the Republic of Indonesia Number I of 1991 concerning the Compilation of Islamic Law which is codified from a collection of fiqh and opinions of scholars which are then used as a source of law for marriage of citizens, especially those who are Muslim. The Compilation of Islamic Law (KHI) in Article 2 states that marriage is "A very strong contract to obey the command of Allah SWT and carrying it out is worship". In addition, Article 4 also states that "Marriage is valid, if

it is carried out according to Islamic law in accordance with Article 2 paragraph 1 of Law No. 1 of 1974 concerning Marriage”.

4.5.4 Law Number 39 of 1999 concerning Human Rights

Human Rights are a set of rights inherent in the nature of human existence as God's creatures and are His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the honor and protection of human dignity and honor. The Republic of Indonesia guarantees the freedom of its citizens to choose their partners to form a family and continue their descendants, this is stated in Article 10 of the Human Rights Law which states:

- (1) Everyone has the right to form a family and continue their descendants through a legal marriage.
- (2) A legal marriage can only take place based on the free will of the prospective husband and wife concerned in accordance with the provisions of laws and regulations

This provision emphasizes individual freedom in choosing a life partner without coercion or discrimination. However, TNI Regulation No. 50 of 2014 prohibits female soldiers from marrying male soldiers of lower rank, this prohibition limits the rights of female soldiers in determining their life partners, creating a conflict with the principles of human rights guaranteed by law. Therefore, an evaluation of the policy is needed so that it is in accordance with the principles of human rights.

4.6 Protection of marriage in human rights in international law

4.6.1 Universal Declaration of Human Rights (UDHR)

The existence of the Universal Declaration of Human Rights (UDHR), which is a standard formulation to advance, respect and uphold Human Rights accepted by the international community as a whole (*erga omnes*), with the issuance of international legal instruments by the UN, thus the Republic of Indonesia as a member of the UN is bound by the declaration. The Universal Declaration of Human Rights or known as the UDHR, Regarding the right to form a family in Article 16 of the UDHR states:

- a) Men and women who are adults, without being limited by nationality, citizenship or religion, have the right to marry and to form a family. They have the same rights in matters of marriage, during marriage and at the time of divorce.
- b) Marriage can only be carried out based on the free choice and full consent of both parties.
- c) The family is a natural and fundamental unit of society and has the right to receive protection from society and the State.

4.6.2 International Convention Civil and Political Right (ICCPR)

This International Covenant is an international agreement on human rights that is intended to realize the common standard of achievement set out in the UDHR. Thus, it mandates the establishment of a Human Rights Committee, a quasi-judicial institution tasked with studying and commenting on reports from countries regarding their compliance with the covenant. Thus, this committee is also tasked with studying and commenting on petitions filed by individuals regarding violations of the covenant by their governments. In this case, the ICCPR guarantees, protects and recognizes that every person, both men and women, to marry and form a family as stated in Article 23, which states:

- a) The family is a natural and basic community unit and has the right to be protected by society and the State.
- b) The rights of men and women of marriageable age to marry and form a family must be recognized.
- c) No marriage can be performed without the free and full consent of the parties to the marriage.
- d) The States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses in marriage. In the event of dissolution of marriage, provision shall be made for the protection of children.

This instrument is important in the protection of human rights at the international level, ratifying the ICCPR through Law No. 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights, Indonesia has shown its commitment to comply with and implement international human rights standards, which are very important for the development of a more just and democratic law and society. Law No. 12 of 2005 concerning the ratification of the ICCPR, the

ratification of the Indonesian government to this convention means that the Indonesian government has confirmed that the Indonesian human rights concept has been universal and international, the product of the ratification has legal force and is binding.

4.6.3 The Convention on the Elimination of All Forms of Discrimination Against Women was adopted and opened for signature, ratification and approval by General Assembly resolution 34/180 on 18 December 1979

Elimination of all forms of discrimination against women The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognizes the rights of women in all aspects of life, including the right to marry and to found a family based on free and informed consent. Article 16 States Parties shall make special efforts to eliminate discrimination against women in all matters relating to marriage and family relations and shall, on the basis of equality of men and women, in particular ensure:

- a) The same right to enter into marriage
- b) The same right freely to choose a spouse and to enter into marriage with their free and full consent

Article 16 of CEDAW affirms that women have the same rights as men in choosing a partner and entering into marriage with the free consent of both parties, TNI Regulation No. 50 of 2014 which prohibits female soldiers from marrying male soldiers of lower rank, this is contrary to the principles guaranteed by CEDAW. This prohibition limits the freedom of women, namely female soldiers, in determining their life partners, which is a violation of the human rights protected by the convention. This policy reflects discrimination that has the potential to harm women's rights to live a private life. Therefore, evaluation and adjustment of policies are needed to be in line with international commitments to human rights, especially women's rights.

Based on the provisions above, the provisions in Perpang No. 50 of 2014 can be considered to violate the principles of human rights guaranteed by National and International law. It is important for us to ensure that all regulations and policies implemented are in line with these values, in order to realize justice for all Individuals.

4.7 Interview Results

- a. Endang Sri Melani, S. Sos., M.H. Head of the Complaints Sub-Division of the National Human Rights Commission. Monday, July 15, 2024 at 10:00 WIB said that regarding the prohibition of marriage between female soldiers and male soldiers of lower rank is a form of discrimination that is contrary to national legal instruments and international law. The regulation needs to be reviewed so that it is in accordance with both national and international human rights law.
- b. Dr., Dr., Aulia Rosa Nasution, S.H., M.Hum., Visiting Professor at the University of Muhammadiyah Malang, Lecturer of Postgraduate Law Program at the University of Medan Area, Medan, Lecturer of Master of Law, at the Military Law College, Army and Permanent Researcher in the field of International Law, Human Rights and Terrorism Studies. Place and implementation of the written interview on Friday, August 19, 2024, at 12.40 WIB in Medan (North Sumatra):
 - 1) In my opinion, if viewed from the aspect of human rights itself, there is actually no problem if a TNI soldier marries a partner who is higher or lower in rank. Because in the Universal Declaration of Human Rights (UDHR), in Law No. 39/1999 concerning Human Rights and also in Law No. 1 of 1974 on Marriage, it has been regulated regarding the rights given to men and women. That in Law No. 1 of 1974 in paragraph 1 Marriage is valid if it is carried out according to the laws of each religion and belief. And paragraph 2 states that Every marriage is recorded according to the applicable laws and regulations. The provisions regarding the right to have a family and continue the lineage are further emphasized in Article 10 of Law Number 39 of 1999 concerning Human Rights which states that everyone has the right to form a family and continue the lineage through a legal marriage. The universal norm contained therein in the form of the right to marry is the most natural, most essential right which is a right given by God Almighty, while the implementation of marriage itself is fully regulated and must be subject to the national

legislation of each country. In essence, human rights provisions are present to strengthen the implementation of religious teachings. Because, there is no religious teaching that degrades human values including in the regulation regarding marriage. Thus, in my opinion, the regulation of a TNI soldier who prohibits marrying a partner who is lower in rank is clearly contrary to international human rights norms, the human rights law in Indonesia and is also not in accordance with the personality of the Indonesian nation which upholds the dignity of every human being, especially in carrying out their life functions as a human being to carry out their social functions, namely carrying out marriage or carrying out household functions in order to have offspring.

- 2) In my opinion, there should be no distinction between Kowad, Kowal and Wara in carrying out marriages, let alone being distinguished from Polwan. Because the four dimensions are part of the defense system in this country. In order to support their welfare, especially the spiritual welfare of each member, they should be given the same rights and opportunities to carry out marriages, without questioning partners who are lower or higher in rank because, the issue of marriage partners cannot be regulated legally but rather based on mutual consent that cannot be forced under any circumstances. Because marriage is not like buying and selling, contracts and business agreements that are regulated by who they marry.

So returning to the norms of Religion, and the norms of Human Rights that have been adopted in various countries around the world, the regulation of TNI members, both KOWAD, KOWAL, WARA, should not be differentiated because they also have the same natural rights as women who will later continue their descendants, as mothers and as husbands' companions. In fact, the TNI in this case should provide support to female TNI soldiers to make it easier in terms of marriage arrangements so as not to give a mental burden to the female soldiers because of course it will have a strong psychological impact on the female TNI soldiers. There is a need for legal protection given to all female TNI soldiers since they get married, so that they can carry out their functions as wives, housewives and part of the state servants who also guard defense and security in Indonesia. The TNI should provide more rights to female TNI soldiers because they are different from men, who in fact only work physically, while women are given additional tasks to become wives, mothers and navigators in the household. The legal rules for female TNI soldiers should be made easier and given easy access, not made difficult.

- 3) In my opinion, every arrangement made in the TNI Matra, especially for female TNI soldiers who are going to get married, must be adjusted to the regulations contained in the 1945 Constitution and also Law No. 39/1999 concerning Human Rights, and also adjusted to International Human Rights Norms based on the Universal Declaration of Human Rights. In fact, if there is a difference in the arrangement, then there is a deviation which will have a bad impact and show disobedience to legal norms, where our country as a country of law places legal norms as the "Commander" in every resolution of legal issues. If this continues, it will cause deviations from legal arrangements that are not based on the regulations above them, namely the 1945 Constitution and Law No. 39/1999 concerning Human Rights. The TNI needs to examine this issue further and examine it from a human rights aspect so that the arrangement of marriage for female TNI soldiers does not cause misery for the soldiers themselves in the future.
- 4) Opportunities and chances are definitely there and nothing is impossible in making efforts to revise and reform TNI regulations, especially those concerning marriage among TNI soldiers. Moreover, with the principle of special law that can deviate from general law or *Lex Specialis Derogat Lex Generali*, then in fact if the TNI can renew the marriage rules within the TNI dimension, it can be done on the basis and basis of appropriate human rights and legal norms that have been in effect so far and not create separate policies and policies that discriminate against fellow female TNI soldiers because there is no difference between KOWAD, KOWAL, WARA and POLRI. This distinction actually makes it seem as if KOWAD is more exclusive, so that it will certainly have a negative effect and psychological impact on KOWAD who are made difficult to carry out their rights as human beings, namely carrying out household functions in their role as the wife of a TNI member. Every regulation made by the TNI should have a strong

basis for consideration from the aspects of religion, law and social norms so as not to cause disparities and not to cause conflict because the main goal of the legal regulation itself is to achieve JUSTICE, both legal justice and social justice, which has been formulated in the philosophy of our nation and state in the 5th principle of Pancasila.

- 5) Of course, the regulation violates the Universal Declaration of Human Rights as the highest norm in Human Rights which has become 'Ius Cogens', the highest norm at the international level based on humanity that is obeyed and respected by nations and countries throughout the world that applies universally to all mankind. Why should we refer to the DUHAM norm, because it is the initial milestone for the emergence of legal regulations that regulate the protection of human rights in all aspects. Although centuries ago, in the time of the Prophet Muhammad, the regulation of these rights was already regulated in the Medina Charter which was one of the Prophet's efforts after the migration to Medina to foster society. The Medina Charter contains formulations regarding religious freedom, relations between groups, the obligation to maintain the unity of life, and others. Not only that, in the era of the Babylonian Kingdom, it was also regulated in the Hammurabi Constitution as the first written constitution in the world. The charter contains 282 laws in total, but there are 32 laws among them that are divided and difficult to read. Its content is the regulation of certain criminal acts and the rewards which were very strictly enforced by King Hammurabi in the 6th century to all the people of Babylonia which we now call Iraq.

So in my opinion, we as law enforcers must learn a lot from the science of past history, so that every legal regulation related to human rights can run in a balanced and harmonious manner and should consider other aspects that are also significant through an approach based on other sciences such as sociology, religious studies, science about humanity and other sciences (Interdisciplinary Studies) so that it is relevant to the situation and development of the era and society that is increasingly advanced and sophisticated and do not break through the regulations merely by making separate legal regulations that are made without a strong foundation, especially the basis of religion and the basis of social norms, because the existence of law will not be able to run without society as the subject of its implementation. The law regulated by the TNI must be based on a wise and pragmatic way of thinking, do not be too rigid, stiff and miserable for its members, in fact the TNI policy makers above should be able to make legal breakthroughs in the regulation of this marriage so that in the future every TNI soldier who will carry out a marriage, can carry out this marriage with a strong foundation of norms, both legal norms, religion and social norms that are harmonious and balanced. The law must continue to develop, so that the regulations made by the TNI should be in accordance with what was conveyed by Prof. Sapiro Rahardjo, in his theory of Progressive Law, states that Progressive Law is a way of law that is always restless to build itself, so that it is qualified to serve and bring people to prosperity and happiness. The application of progressive law by judges to realize this social justice can be realized by the method of legal discovery, namely interpretation and argumentum, by placing social justice of society above statutory regulations. The definition of law according to Sapiro Rahardjo, law is a human work in the form of norms containing behavioral instructions. Law is also a reflection of what humans want. Therefore, legal regulations in the TNI should be in line with Prof. Sapiro Rahardjo's Progressive Law theory, based on what humans themselves want to realize justice for humanity.

- c. Peltu Jefri Vecky Rumandor NRP 21940034440275, Ajendam XIII/Mdk unit with his wife, Lieutenant Ckm (K) Truly Patricia Mantiri, S.Kep, Kesdam XIII/Mdk unit as a respondent in one family whose wife is of a higher rank than her husband stated that:
 - 1) In our professional lives, the dynamics of rank do not affect our performance or responsibilities. We work in different work units, which allows us to maintain professionalism without personal interference. The perception of others who may assume that there will be a conflict or influence of rank in our duties. However, by maintaining open communication and consistent professionalism, we have been able to prove that our work is not affected by our personal relationships. We are both committed to showing that effectiveness and dedication in duty are of the utmost importance.

- 2) I see it as an opportunity to show that gender equality can truly be implemented in all aspects of life, including in the military. It is important to support and respect each other as individuals or human beings created by God Almighty.
- e. Lieutenant Cpm (K) Juri Fransiska S.H.,M.H. NRP 11180011950889 as a wife who married a husband from the Indonesian National Police Agency with a lower rank (Brigadier/Non-Commissioned Officer), states the following:
 - 1) In my opinion, the regulation that requires the same rank in marriage can limit a person's personal and professional rights. As a member of the TNI, I feel that the choice of life partner should not be limited by rank. This is in line with the principles of human rights that support individual freedom in choosing a life partner without discrimination.
 - 2) Professionally, my marriage to a husband who has a lower rank does not affect my performance or relationship with colleagues and superiors. I am expected from the TNI institution to uphold professionalism, even from the Polri institution, I think this is a form of synergy between the TNI and Polri.
 - 3) From my perspective, the regulation that requires rank in marriage is an approach that does not prioritize the principle of justice, because I chose my partner through a long process and I have the same faith as my husband who is able to support my life, because I married a person not a rank. Thus, it does not limit the rights as an Indonesian citizen.
 - 4) I see a regulation that limits the choice of life partner based on rank. We must encourage change so that democracy and modernity respect welfare, especially in terms of marriage. My hope for the future of TNI regulations is that there will be a revision that allows for more flexibility in the regulations on marriage between ranks.

The results of this interview concluded that the regulation prohibiting female TNI soldiers from marrying male soldiers of lower rank is considered a form of discrimination that is not in line with the principles of human rights and gender equality. This regulation not only contradicts national and international laws, such as the 1945 Constitution, Law No. 39/1999 concerning Human Rights, and various international conventions such as the UDHR, ICCPR, and CEDAW, but also has the potential to harm the morale and welfare of soldiers. The sources or respondents emphasized the importance of revising this regulation to ensure that every soldier has the same rights in choosing their life partner without discrimination. In addition, the example of the Police shows that flexibility in marriage regulations does not interfere with professional performance, so the TNI should be able to adjust policies to respect human rights and gender equality.

5. Conclusion

5.1. Conclusion

The conclusions of this study are:

1. The regulation prohibiting marriage between female soldiers and male soldiers of lower rank is considered a form of discrimination that is contrary to the principles of gender equality and human rights. Every individual must have the freedom to choose their life partner without being limited by rank or position. Therefore, this regulation needs to be reviewed so that the TNI complies with human rights standards that are recognized both nationally and internationally.
2. The regulation prohibiting marriage between female soldiers and male soldiers of lower rank does not have an explanation or reason in the regulation, furthermore, the technical guidance book for the development of Kowad, Kowal and Wara which is used includes provisions regarding prospective husbands for female soldiers as follows:
 - a. For Kowad, they are not allowed to marry male soldiers with lower ranks, this is in line with Perpang Number 50 of 2014, but in Perpang Number 50 of 2014 this does not apply to Polri, meaning they can marry Polri with lower ranks.
 - b. For Kowal, they are not allowed to marry male soldiers with lower ranks and this also applies to male Polri with lower ranks.
 - c. For Wara, they are not allowed to marry male soldiers with lower ranks, which also applies to Polri and PNS with lower ranks.

In the regulation of the technical manual for the development of Kowad, Kowal and Wara are aligned horizontally. However, there is an inconsistency in the regulation. Meanwhile, the National Police does not prohibit marriage between these ranks, which reflects the National Police's commitment to justice and gender equality. Regulation of the Indonesian Chief of Staff Number 6 of 2018 concerning amendments to Regulation of the Chief of Staff Number 9 of 2010 concerning the procedure for submitting marriages for civil servants at the Indonesian National Police in Article 2 states that the principles in this regulation include justice, namely that every marriage submission process is carried out fairly without discrimination.

3. The inconsistency of these regulations can have an impact on the morale, welfare and motivation of soldiers. Because there are still female soldiers whose ranks are higher than male soldiers (husbands) in their family life without affecting the professionalism of the TNI. Therefore, it is important to prioritize justice and non-discrimination in marriage..
4. Legal instruments regarding marriage are as follows:
 - a. The 1945 Constitution Article 28 B paragraph 1 states that "Everyone has the right to form a family and continue their lineage through a legal marriage",
 - b. Law Number 1 of 1974 concerning Marriage in Articles 1 and 2 states that marriage is a physical and spiritual bond between a man and a woman based on the Almighty God and is legal if carried out according to the laws of each religion, furthermore in Article 6 paragraph (1) emphasizes that marriage must be based on the agreement of both parties who will carry out the marriage.
 - c. Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law The State of Indonesia also has a Compilation of Islamic Law (KHI) in Article 2 stating that marriage is "A very strong contract to obey the command of Allah SWT and carrying it out is worship". In addition, Article 4 also states that "Marriage is valid, if it is carried out according to Islamic law in accordance with Article 2 paragraph 1 of Law Number 1 of 1974 concerning Marriage".
 - d. Law Number 39 of 1999 concerning Human Rights The State of Indonesia guarantees the freedom of its citizens to choose their partners to form a family and continue their descendants, this is stated in Article 10 of the Human Rights Law which states:
 - 1) Everyone has the right to form a family and continue their lineage through a legal marriage.
 - 2) A legal marriage can only take place based on the free will of the prospective husband and wife concerned in accordance with the provisions of the laws and regulations
 - d. UDHR, Universal Declaration of Human Rights or known as UDHR, Regarding the right to form a family in Article 16 of UDHR states:
 - 1) Men and women who are adults, without being limited by nationality, citizenship or religion, have the right to marry and to form a family. They have the same rights in matters of marriage, during marriage and upon divorce.
 - 2) Marriage can only be carried out based on the free choice and full consent of both parties.
 - 3) The family is a natural and fundamental unit of society and has the right to receive protection from society and the State.
 - e. International covenant on civil and political rights (ICCPR) ratification through Law No. 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights, Article 23 states as follows:
 - 1) The family is the basic foundation of society that is experienced and fundamental and has the right to protection from society and the State.
 - 2) The rights of adult men and women to marry and form a family must be recognized.
 - 3) No thought can be carried out without the free and full will of the parties who wish to marry.
 - f. Convention on the Elimination of All Forms of Discrimination against Women (Cedaw), Article 16 ensures:
 - 1) Equal rights to marry
 - 2) Equal rights to freely choose a partner and to marry on the basis of their free and full consent
 - g. In the Presidential Instruction of the Republic of Indonesia Number 9 of 2000 concerning Gender Mainstreaming in National Development, it also states that gender equality is the same conditions for men and women in the same conditions in obtaining opportunities, involvement or participation and decision-making as well as accessibility to development and welfare benefits.

5.2. Suggestion

Based on the conclusions above, the author makes the following suggestions:

1. Further study is needed to ensure that existing regulations do not violate basic rights and it is important to ensure that all regulations and policies implemented are in line with the values of justice and non-discrimination. Regulation Perpang Number 50 of 2014 concerning the prohibition of marriage regarding restrictions on determining prospective life partners, needs to be evaluated so that it is in line with the provisions guaranteed by the 1945 Constitution, Law Number 1 of 1974 concerning Marriage, KHI, DUHAM, ICCPR, Law Number 12 of 2015, Cedaw, and the principle of gender equality.
2. The technical manual for the development of Kowad, Kowal and Wara which is used horizontally, shows an inconsistency that needs to be further evaluated. It would be better if the prohibition refers to the prohibition regulated by Law Number 1 of 1974 concerning Marriage.
3. In the family life of female soldiers with male soldiers, who have been married, there are female soldiers who are higher in rank, but this does not affect the professionalism of the TNI, such as not being in the same work environment. Therefore, it is very important to prioritize justice and non-discrimination in terms of marriage. Policies that discriminate based on rank affect the morale and welfare of TNI soldiers.
4. Open and comprehensive dialogue is needed between all related parties to reach an agreement that upholds the principles of justice and non-discrimination in marriage, in addition to adhering to the types and hierarchy of legislation in Law Number 12 of 2011. Based on this, the regulation needs to be updated and synchronized.
5. Realizing *ius constituendum* in a more just and non-discriminatory marriage, by conducting open dialogue between all relevant parties, ensuring transparency in explaining the reasons for the regulations and prioritizing consistency in the application of the law. The revision of these regulations must consider the values of justice and gender equality recognized by various national and international legal instruments. Thus, the TNI can create a more inclusive and professional environment, while maintaining high organizational discipline and performance.
6. Comparison with the Police shows that regulations are more flexible and can be implemented without disrupting the professional performance of an organization. Therefore, the TNI can approach and consider revising the regulations to prioritize justice and non-discrimination, while maintaining discipline and professionalism within the unit.

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