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# The Offense of Adultery in the Military Environment: A Comparative Study of the Indonesian and Malaysian Military Criminal Law Systems

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## *Abstract*

*Adultery committed by military personnel is viewed not only as a violation of moral norms but also as a threat to the discipline, integrity, and professionalism of defense institutions. Although both Indonesia and Malaysia criminalize such acts within the military, they have adopted different legal approaches in accordance with the nature of their legal systems and underlying values. This study aims to analyze the legal framework governing the criminal offense of adultery within the military in Indonesia and Malaysia, identify their similarities and differences, and evaluate the implications of these frameworks for the enforcement of military discipline. This study is a normative legal study employing a statutory approach and a comparative approach. Data were obtained through a literature review of legislation, internal regulations of the Indonesian National Armed Forces (TNI) and the Malaysian Armed Forces (ATM), scholarly literature, and relevant legal documents, and were then qualitatively analyzed using a comparative method. The results of this study show that both countries classify adultery as a serious offense subject to criminal sanctions and disciplinary actions, yet they have different legal policy orientations. Indonesia places greater emphasis on maintaining military discipline, order, and professionalism through an institutional approach, whereas Malaysia integrates Islamic moral and legal values into its regulations and the imposition of sanctions against military personnel. These differences reflect the influence of legal systems, social values, and the construction of the relationship between state law and religion in each country. This study confirms that the effectiveness of regulations governing the criminal offense of adultery in a military context is determined not only by the severity of the sanctions but also by the alignment of legal policies with the value systems prevalent in society and within military institutions. These findings contribute to the development of comparative military criminal law studies and serve as a basis for reformulating military legal policies that are more adaptive to social dynamics and the need for professionalism within the armed forces..*

## INTRODUCTION

From birth, humans tend to live together with other human beings. The shared life between a woman and a man who, in time, will have a child is known as marriage. Marriage is not only a means of continuing the family lineage but also plays an important role in family responsibilities. A family can be viewed from several aspects, namely, meeting family needs and making decisions together. Therefore, establishing a family is an integral part of marriage.[1] Marriage serves as the best solution for human beings,[2] and a valid marriage under Islamic law is defined as a *mitsaqan ghalizan*, or a solemn and binding covenant to carry out Allah's commands, and fulfilling it constitutes an act of worship.[3]

One of the purposes of marriage itself is to achieve both physical and spiritual happiness, as well as to establish tranquility and peace within the household.[4] However, in reality, not all marriages are able to achieve these goals and run well or function harmoniously. The sacred bond and noble goals of marriage can be degraded and not achieved due to betrayal committed by some parties, both women and men, through infidelity or adultery with other parties (third parties). Adultery is a form of criminal act of morality related to sexual relations and is included in the category of crime. In the development of modern society, adultery not only occurs among civilians but is also found in the military environment, including those committed by military members.

For example, in Indonesia, in February 2026, 13 personnel of the Indonesian Army were involved in an extramarital affair with the wife of an Indonesian Army soldier within the XVII/Cenderawasih Regional Military Command (Kodam XVII/Cenderawasih).[5] In addition, there was also a case involving a member of the Indonesian National Armed Forces who had an affair with a member of *Persit* (the Army Wives Association), who was the wife of a senior Indonesian National Armed Forces personnel.[6] The existence of several cases of adultery involving military personnel

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[1] Ahmad Fauzan, "Pemikiran Haidar Bagir Dalam Hukum Keluarga Islam," *Jurnal Hukum Keluarga Dan Peradilan Islam* 5, no. 2 (2024).
[2] Fauziah Khairani, "Penegakan Hukum Terhadap Oknum Anggota Tentara Nasional Indonesia Angkatan Darat Yang Melangsungkan Perkawinan Tidak Tercatat," *Sosek: Jurnal Sosial Dan Ekonomi* 1, no. 2 (2020).
[3] Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Prenada Media, 2006). h. 61
[4] Verennica Putri Utama, "Tinjauan Hukum Terhadap Perkawinan Di Bawah Tangan Bagi Anggota Tentara Nasioanl Indonesia Angkatan Darat (TNI AD) Di Indonesia" (Universitas Lampung, 2025).
[5] Paulus Pulo, "Geger Istri Anggota TNI Diduga Berselingkuh Dengan 13 Prajurit," Detikjatim, 2026, https://www.detik.com/jatim/hukum-dan-kriminal/d-8376581/geger-istri-anggota-tni-diduga-berselingkuh-dengan-13-prajurit?
[6] Feryanto Hadi, "Kisah Terbongkarnya Perselingkuhan Pratu RH Dengan Istri Seniornya, Serka MFB Curiga Karena Hal Ini," Tribunnews, 2025, https://wartakota.tribunnews.com/news/869827/kisah-

demonstrates that, despite being subject to strict military discipline and a rigorous code of ethics, members of the Indonesian National Armed Forces may still engage in misconduct that should be avoided, considering that the military represents a nation's sovereignty, discipline, and morality. The military not only serves as the front line of national defense but is also bound by a professional code of ethics that is far more stringent than that applied to civilians. Therefore, military personnel, as state officials, should not engage in adultery, as such acts tarnish the reputation of the military institution in the eyes of the public, where it is recognized as an institution characterized by discipline, obedience to prevailing norms, and respect for the chain of command.

The criminal offense of adultery is a complex legal issue involving social, moral, and legal aspects within a country. Consequently, in practice, the legal regulations governing adultery vary across different countries, particularly between Indonesia and Malaysia. This is especially relevant to soldiers, whether in the Indonesian National Armed Forces or the Malaysian Armed Forces. Although Indonesia and Malaysia have similar cultural roots, they stand on different legal foundations. Both Indonesia and Malaysia regard adultery as a complaint-based offense that undermines the dignity of a soldier, as such acts are considered contrary to the norms governing human life.

Considering the differences in the legal regulations governing adultery cases within the military, both in the Indonesian National Armed Forces and the Malaysian Armed Forces, these differences in legal mechanisms inevitably create different sanctions dynamics. This issue has attracted the researcher's interest in examining how the regulations within the Indonesian National Armed Forces and the Malaysian Armed Forces respond to the criminal offense of adultery and how these sanctions produce sociological impacts on the offenders. By comparing these two systems, this study is expected to provide a deeper understanding of the effectiveness of legal sanctions in reducing the incidence of morality-related offenses within the military.

## METHODS

The study employed a normative juridical method using a statute approach. The statutory approach is used to examine various regulations governing violations related to immoral acts or adultery. This method is also used to examine and compare the sanctions and social impacts of adultery in the Indonesian National Armed Forces and the Indonesian National Armed Forces based on applicable legal regulations and relevant

terbongkarnya-perselingkuhan-pratu-rh-dengan-istri-seniornya-serka-mfb-curiga-karena-hal-ini#google_vignette.

theories. Data were collected through library research by examining legal documents obtained from credible sources.

## RESULTS AND DISCUSSION

According to Islamic jurisprudence scholars' view, adultery is understood as unlawful sexual penetration committed without any element of *syubhat* (legal doubt). In line with this view, Ibn Rushd defined it as intimate relations outside of a lawful marriage, which is neither based on ownership of an enslaved woman nor on a mistaken belief regarding the validity of a marriage (*syubhat*). Meanwhile, Hamka emphasized that adultery encompasses all forms of sexual intercourse that do not take place through a legal marriage process or that involve an invalid marital status.[7] Adultery is viewed as a serious moral offense that has the potential to undermine family order and societal structures. To maintain social order and create a deterrent effect, this act is subject to criminal sanctions. Procedurally, adultery is a complaint-based offense that requires a complaint from an immediate family member, namely a spouse for those who are married, or a parent or child for those who are not legally married.[8]

### 1. The Offense of Adultery in the Indonesian Military

a. Adultery Law in the Indonesian Military System

The Indonesian National Armed Forces serves as an instrument of national defense, its operations governed by Law Number 34 of 2004. The Indonesian National Armed Forces' primary mandate is to safeguard the sovereignty and territorial integrity of the Unitary State of the Republic of Indonesia based on the constitution and the Five Principles (*Pancasila*). Its strategic role includes implementing defense policies, conducting military operations during war and other than war, and actively contributing to global peacekeeping missions as part of international security diplomacy.[9]

From a juridical perspective, members of the Indonesian National Armed Forces have the same legal status as civilians before the law, although they remain subject to specific military regulations governing discipline and military responsibilities. The military judicial system is based on Law Number 31 of 1997, which divides the levels of military courts according to rank and the nature of the offense. Military personnel involved in military offenses will be prosecuted through the Military Court, with reference to the

[7] Hamka, *Tafsir Al-Azhar Juz XVII* (Jakarta: Pustaka Panjimas, 1983). h. 47
[8] Dewi Chusna Sartika, "Perbandingan Tindak Pidana Zina: Implikasi Hukum Dan Sosial Di Indonesia Dan Turki," *Indonesian Journal Of Sharia and Law* 3, no. 1 (2026).
[9] Nadya Azzahra, Syamsir Syamsir, and Muhammad Amin, "Kewenangan Tentara Nasional Indonesia (TNI) Dalam Pemberantasan Tindak Pidana," *Limbago: Jurnal of Constitutional Law* 2, no. 2 (2022).

Indonesian Military Criminal Code as the legal basis for determining the type of offense and the applicable sanctions.

Various forms of military law violations, ranging from drug abuse and embezzlement to insubordination and adultery, are still frequently found within the Indonesian National Armed Forces. Adultery, in particular, is considered a serious moral violation, as every soldier is obliged to maintain integrity and self-control in all aspects of life. Despite increasingly stringent regulations, such cases continue to arise. Based on the principle of equality before the law, Indonesian National Armed Forces personnel found guilty may be prosecuted and held criminally accountable, referring to the provisions of the Indonesian Criminal Code and other relevant laws and regulations.[10]

The Military Criminal Code does not contain specific provisions regarding offenses against morality; therefore, the legal reference is transferred to the Indonesian Criminal Code. As mandated by Article 1 of the Military Criminal Code, general criminal law remains binding on military personnel, meaning every member of the Indonesian National Armed Forces is subject to these moral regulations. This emphasizes the principle of equality before the law, where no soldier is immune from the law and every violation must be legally accounted for.[11] In general, violations of criminal law by military personnel automatically implicate disciplinary violations. Conversely, indisciplinary actions cannot always be categorized as military crimes. Regarding the handling of Indonesian National Armed Forces personnel involved in cases of adultery or other morality-related offenses, the applicable legal provisions are as follows:

1) Indonesian Criminal Code

Article 284 of the Indonesian Criminal Code is a fundamental legal instrument that regulates the offense of adultery and serves as the primary basis for prosecuting criminal cases involving morality-related offenses.[12]

2) Military Criminal Code

Military law regulations cover a wide range of criminal offenses for military personnel, particularly offenses that tarnish dignity, such as adultery and the immorality act. Within the Indonesian National Armed Forces, these acts are classified as serious

[10] Adriano Solo Lopez; Debi Fallo; Rosalind Fanggi, "Analisis Kriminologi Terhadap Perzinahan Yang Dilakukan Oleh Oknum Tentara Nasional Indonesia Di Wilayah Hukum Pengadilan Militer III-15 Kupang (Studi Kasus Pengadilan Militer III-15 Kupang Nomor 19-K/PM.III-15/AD/VIII/2024," *Ikraith-Humaniora* 9, no. 3 (2025). h. 949

[11] Wawan Nuswantoro, "Tinjauan Yuridis Penyidikan Tindak Pidana Kejahatan Terhadap Kesusilaan Dan Perzinahan Yang Dilakukan Oleh Anggota Militer (Studi Kasus: Pomdam IV/Diponegoro)" (Universitas Islam Sultan Agung Semarang, 2023).

[12] Viena Nungky Kusuma, "Tindak Pidana Kesusilaan Ditinjau Dalam Undang-Undang Darurat Nomor 1 Tahun 1951, KUHP Dan KUHP 2023," *Jurnal UNES Law Review* 6, no. 1 (2023).

offenses because they negatively impact the institution's image, damage the honor of the corps, and degrade the level of discipline and professionalism of each military personnel.[13]

3) Law Number 31 of 1997

The military justice system holds the mandate to adjudicate crimes committed by Indonesian National Armed Forces personnel, including cases of adultery and immorality. The legal process, ranging from investigation to trial, is conducted based on military law, which has specific characteristics. This system remains based on the principles of discipline, hierarchical relationships, and protection of the interests of the military organization.[14]

4) Law Number 34 of 2004

The Indonesian National Armed Forces establishes strict regulations regarding soldier discipline, requiring every member to uphold the dignity and honor of the corps. Any form of ethical violations, including adultery, will be processed through the military justice system and may be subject to sanctions in accordance with the applicable laws and regulations.[15]

5) Military Disciplinary Law (Law Number 25 of 2014)

In addition to criminal penalties, Indonesian National Armed Forces personnel involved in immoral acts are also subject to administrative and military disciplinary consequences. These sanctions vary from reprimands and detention to Dishonorable Discharge, depending on the severity of the violation. Given its impact on the institution's dignity and morality, adultery is classified as a serious offense that can threaten the stability and order of the military organization.[16]

The prohibition of adultery is a fundamental principle in marriage, as affirmed in Article 27 of the *Burgerlijk Wetboek*, which upholds the principle of monogamy. Historically, the crime of adultery was regulated under Article 284 of the old Indonesian Criminal Code. However, this regulation has been updated through Law Number 1 of 2023, which came into effect on January 2, 2026. Therefore, the provisions regarding the

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[13] Wikisource, "Kitab Undang-Undang Hukum Pidana Militer," Wikisource.org, 2024, wikisource.org/wiki/Kitab_Undang_Undang_Hukum_Pidana_Militer, No. 167. Sumber: Indeks: KUHPM.pdf.

[14] Tiarsen Buaton, "Reformasi Sistem Peradilan Militer Indonesia (Reform of The Indonesian Military Justice System)," *Jurnal Studi Multidisiplin Ilmu* 2, no. 1 (2024). h. 37-51

[15] Kariawan, Haerani, and Karyati, "Peranan Tentara Nasional Indonesia Dalam Penyelenggaraan Pertahanan Keamanan Menurut Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia," *Unizar Recht Journal (URJ)* 1, no. 4 (2022). h. 244-251

[16] Salmanita Shalsabella Pramudita and Iwan Triadi, "Fakultas Hukum," *Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 5 (2023). h. 244-251

criminal offense of adultery now refer to the new Indonesian Criminal Code, with the following details: [17]

Table 1. Comparison of Article 284 of the Old Criminal Code with Article 411 of Law No. 1 of 2023 on the New Criminal Code

| **Article 284 (Old Criminal Code)** | **Article 411 of Law No. 1 of 2023 (New Criminal Code)** |
|---|---|
| 1. Punishable by imprisonment for a maximum of nine months:<br>a. A married man who commits adultery (overspel), knowing that he is subject to the provisions of Article 27 of the Civil Code; the same applies to a married woman who commits a similar act despite knowing that Article 27 of the Civil Code applies to her.<br>b. A married man who commits adultery (overspel), knowing that the provisions of Article 27 of the Civil Code apply to him; the same applies to a married woman who commits a similar act even though she knows she is bound by the provisions of Article 27 of the Civil Code. | 1. Any person who engages in sexual intercourse with someone other than their legal spouse (husband or wife) is deemed to have committed the criminal offense of adultery. The offender faces a maximum prison sentence of one year or a Category II fine of up to Rp10,000,000. |
| 2. Prosecution may only be initiated based on a complaint filed by the aggrieved spouse. If they are subject to the provisions of Article 27 of the Civil Code, such a complaint must be accompanied by a petition for divorce or legal separation filed within three months on the same grounds. | 2. The criminal offenses listed in paragraph (1) are complaint-based offenses that may only be prosecuted based on a report filed by:<br>a. A husband or wife, if the perpetrator is bound by a valid marriage<br>b. A parent or child, if the perpetrator is not or has not yet been bound by a marriage |

[17] Internet hukum online

| | |
|---|---|
| 3. Legal action may only be brought on the basis of a complaint filed by the aggrieved spouse (husband or wife). If they are subject to Article 27 of the Civil Code, the complaint must be accompanied by a petition for divorce or legal separation within three months, based on the same grounds. | 3. The provisions set forth in Articles 25, 26, and 30 shall not apply to the types of complaints referred to in paragraph (1) |
| 4. The complainant has the right to withdraw the complaint as long as the pretrial examination phase has not yet been conducted | 4. A complaint may be withdrawn as long as the court proceedings have not yet officially begun |
| 5. For married couples subject to Article 27 of the Civil Code, complaints regarding adultery will not be processed as long as the marriage has not been officially dissolved through divorce or until a final and binding court decision regarding legal separation has been issued. | |

Referring to the table, it can be seen that both the former Indonesian Criminal Code and Law Number 1 of 2023 (the new Indonesian Criminal Code) consistently regulate provisions regarding the criminal offense of adultery. In the old Criminal Code, adultery is referred to as *gendak* (overspel) and is regulated in Article 284. Meanwhile, in the new Criminal Code, adultery is regulated in Article 411. This Indonesian Criminal Code is an expansion of the old Indonesian Criminal Code, which only criminalized adultery if one of the perpetrators was married. This offense now applies not only to married legal subjects but can also ensnare the unmarried.

b. Legal Sanctions for Indonesian National Armed Forces Personnel Involved in Adultery

The Indonesian National Armed Forces personnel who are proven to have committed adultery or engaged in extramarital affairs are generally subject to strict legal and administrative sanctions. According to internal regulations and the Indonesian Criminal Code, such immoral acts are categorized as serious disciplinary violations that can damage the reputation and dignity of the military institution.

1) Criminal Sanctions

Criminal sanctions are defined as a verdict or legal action imposed by a judicial institution on any person found to have violated the law. The imposition of these sanctions serves the function of upholding justice, creating a deterrent effect, maintaining public security, and facilitating social rehabilitation for convicts.[18]

2) Administrative Sanctions

Regulations regarding administrative sanctions for soldiers are outlined in the Regulation of the Indonesian National Armed Forces Commander Number 11 of 2018. According to Article 1, number 2, these sanctions are legal consequences that accompany disciplinary or criminal penalties, with direct implications for career deterrence, such as suspension of rank and education. These sanctions can be applied to violations of discipline and public order and include the following administrative actions:[19]

a) The issuance of reprimands or warnings is intended to address minor violations.
b) Dismissal from a position is a sanction in the form of being relieved of duties from the current position due to a serious violation of law or discipline.
c) Deferment of promotion is imposed on soldiers as a legal consequence of certain disciplinary or criminal violations.
d) Dishonorable Discharge is imposed as the highest penalty in the form of dismissal from military membership for those proven to have committed serious violations.
e) Disciplinary punishment in the form of temporary detention is imposed on soldiers in a special detention cell as a consequence of the violations committed.

c. Stigmatization and Social Impact on Indonesian National Armed Forces Personnel Involved in Adultery

a) Stigma as a Violator of Military Morals and Ethics

Immorality is defined as behavior that violates norms of decency and social ethics, as stipulated in Article 281 of the Indonesian Criminal Code as a complaint offense. Within the Indonesian National Armed Forces, actions that violate these moral standards are categorized as serious disciplinary violations. Every soldier bears the responsibility to

[18] Teng Junaidi Gunawan, "Kajian Limitasi Maksimum Sanksi Pidana Kejahatan Ekonomi - Perspektif Analisis Ekonomi Terhadap Hukum," *Jurnal Hukum Pidana Dan Kriminologi* 3, no. 2 (2022). h 53
[19] Arif Fahmi Lubis, "Skorsing Dan Sanksi Administratif Bagi Prajurit TNI Bagi Prajurit Yang Melakukan Pelanggaran Hukum," *Tabsyir: Jurnal Dakwah Dan Sosial Humaniora* 2, no. 1 (2021).

maintain personal integrity and the dignity of the institution through professional and moral behavior.

Soldiers involved in immoral acts face dual sanctions: general criminal penalties if the elements of the offense are met, and military disciplinary sanctions. This is stipulated in Law Number 25 of 2014 concerning Military Disciplinary Law, which regulates the conduct of soldiers. Such actions are considered to violate the values of the *Sapta Marga*, particularly the honor and integrity that underpin the identity of every member of the Indonesian National Armed Forces.[20]

b) Negative Stigma within the Unit Environment (Internal Military)

Within the military environment, every Indonesian National Armed Forces personnel carries the reputation of the unit (corps). Therefore, when a soldier commits adultery, the act is categorized as a serious offense that risks disrupting the stability of military discipline and order. Moral violations such as adultery not only damage the dignity of the perpetrator but also create a moral burden for fellow soldiers. This negatively impacts the unit's reputation and risks weakening the soldiers' esprit de corps, or spirit of camaraderie.[21]

3) Social Stigma in Society

The Indonesian National Armed Forces are not only expected to uphold morality, integrity, discipline, and honor as standards of professionalism, but also to serve as role models in society. Therefore, when an Indonesian National Armed Forces personnel is found guilty of adultery, they are often deemed unfit to be a role model and are seen as undermining military professionalism. Negative stigmas often arise, such as the assumption that Indonesian National Armed Forces personnel are immoral. These actions can ultimately erode public trust in the military institution.[22]

4) Social Impact

a) Broken Family Relationships

If a married Indonesian National Armed Forces personnel is found guilty of adultery, this will not only damage the family structure but can also have significant repercussions

[20] Nadia Novianti Kusuma Dewi, "Pertanggungjawaban Pidana Bagi Anggota TNI Yang Melakukan Tindak Pidana Kesusilaan Dengan Orang Yang Bukan Anggota Keluarga Besar TNI (Studi Putusan Nomor: 5-K/Pmu/Bdg/Al/Iv/2019," *Jurnal Transparansi Hukum* 6, no. 1 (2023).

[21] Adwin Wibisono, "Batas Moral Kepatuhan: Sebuah Kajian Etika Militer Berdasarkan Clausewiitz Dalam Buku Vom Krieg" (Sekolah Tinggi Filsafat Driyarkara, 2023). h. 2-4

[22] Sindi Mutiara Sefia, "Tinjauan Yuridis Terhadap Tindak Pidana Perzinahan Atau Asusila Yang Dilakukan Oleh Prajurit TNI AD Di Wilayah Hukum Pengadilan Militer 1-04 Palembang (Studi Kasus: Putusan Nomor: 83-K/PM 1-04/AD/VII/2023" (Universitas Muhammadiyah Palembang, 2025). H. 4

for the Indonesian National Armed Forces as a state institution.[23] This act has the potential to destroy harmony in the household, ultimately leading to divorce.[24]

b) Social sanctions within the military environment

The Indonesian National Armed Forces personnel found guilty of adultery are likely to be shunned by other soldiers, and this can even lead to a decline in corps solidarity as a result of their actions.[25] This is due to the military culture, which places a high value on honor, loyalty, and collective discipline—violations committed by a soldier risk damaging group cohesion and eroding the trust of their colleagues.

c) Impact on career and social status

If an Indonesian National Armed Forces personnel is proven to have committed adultery, he or she may be subject to punishment, including criminal, disciplinary, or administrative sanctions. These administrative sanctions can result in delayed promotions,[26] which ultimately impact their career development within the military.

**2. The Offense of Adultery in the Malaysian Military**

a. Adultery Law in the Malaysian Military System

The Malaysian Armed Forces is Malaysia's national military force, comprising three main branches, namely the Army, the Royal Navy, and the Royal Air Force. These three branches are responsible for maintaining national defense against various threats, both internal and external. In addition to its primary duties, the Malaysian Armed Forces also provides support to civil authorities in maintaining public order, disaster management, and supporting the national development agenda. Globally, the Malaysian Armed Forces' role extends to United Nations peacekeeping missions, demonstrating support for Malaysia's foreign policy.[27]

An interesting aspect of the Malaysian legal system is the country's constitutional guarantees that accommodate the diversity of legal systems, particularly those relating to Islamic law and other religious laws. This situation has given rise to judicial dualism in handling cases, both those related to violations of civil norms and Islamic norms. This

[23] Esperansa Sherli Dacosta et al., "Tinjauan Kriminologi Terhadap Perzinaha Yang Dilakukan Oleh Anggota TNI Dengan Istri Sesama Anggota TNI," *Jurnal Hukum Bisnis* 12, no. 6 (2023). h. 2

[24] Aziz Dewanti, "Dampak Perselingkuhan Terhadap Hubungan Rumah Tangga Suami Istri (Analisis Perkara Melalui Mediasi Di Pengadilan Agama Jambi)," *Maqhasid: Jurnal Studi Hukum Islam* 14, no. 1 (2025). H. 178

[25] Wibisono, "Batas Moral Kepatuhan: Sebuah Kajian Etika Militer Berdasarkan Clausewiitz Dalam Buku Vom Krieg." h. 2-4

[26] Tetty Melina Lubis et al., "Skorsing Dan Sanksi Administratif Bagi Prajurit Yang Melakukan Pelanggaran Hukum," *Jurnal Hukum, Politik, Dan Ilmu Sosial (JHPIS)* 1, no. 3 (2022). h. 2

[27] Wikipedia, "Angkatan Tentara Malaysia," Wikipedia Ensiklopedia Bebas, 2025, https://id.wikipedia.org/wiki/Angkatan_Tentara_Malaysia.

provision aligns with Article 3 paragraph (1) of the Malaysian Federal Constitution, which establishes Islam as the official religion of the Federation, while guaranteeing the freedom of adherents of other religions to worship safely and peacefully throughout the country.[28]

As a former British colony, Malaysia still maintains the influence of the common law system in its legal system to this day. In practice, this system runs side by side with Islamic law and customary law, thus forming the characteristics of a pluralistic and complementary legal system.[29] In this context, Malaysia also applies Sharia law that regulates certain criminal acts, including adultery. In the military environment, personnel of the Malaysian Armed Forces are subject to the Armed Forces Act 1972. However, in the Malaysian military legal system, there are no specific provisions that explicitly regulate the criminal offense of adultery. Nevertheless, military personnel who are proven to have committed adultery, infidelity, or acts of *khalwat* (close proximity between unmarried individuals of the opposite sex) are still subject to military disciplinary sanctions. These provisions apply in accordance with the legal regulations and disciplinary norms established for soldiers.[30] This is because such actions are considered to tarnish the reputation of the military institution and constitute a violation of the soldier's code of ethics. Therefore, cases of adultery committed by soldiers are processed through provisions relating to violations of discipline and morals in the military environment.

The details regarding the articles in the Armed Forces Act 1972, which are used to ensnare perpetrators of adultery, are as follows:

1) Section 87: Conduct to the Prejudice of Service Discipline

Immoral or indecent acts are included in the category of conduct detrimental to military discipline, as they are considered to tarnish the good name of the Malaysian Armed Forces.

2) Section 88: Misconduct Relating to Indecent Conduct

Although the provisions of the act generally address offenses in general, Section 88 specifically covers violations of civil law brought into the military sphere. Therefore, if a

[28] Nasaruddin Umar, "Studi Hukum Perbandingan Sistem Ketatanegaraan Malaysia Dan Indonesia," *Junal IAIN Ambon: Tahkim* 9, no. 2 (2013). h. 113
[29] Basar Dikuraisyin, "Sistem Hukum Dan Peradilan Islam Di Malaysia," *Jurnal Keislaman Terateks* 1, no. 3 (2017). h. 3
[30] Ahmad Syazman Bin Othman, "Hukuman Bagi Pezina Di Sarawak Malaysia," *Al-Jinayah: Jurnal Hukum Pidana Islam* 1, no. 1 (2015).

military member commits a violation of civil law, such as an indecent act under criminal law or Sharia law, the individual can be prosecuted under the provisions of that section.[31]

3) Section 89: Conduct Unbecoming

This provision is one of the most frequently used articles in cases of adultery or infidelity. This is because Section 89 regulates the punishment of military personnel, including commissioned officers, who behave inconsistently with the dignity, honor, and values of decency as a soldier.[32]

4) Application of Sharia Law to Muslim Military Personnel

For Muslim military personnel, they are also subject to the Sharia Criminal Offences Enactment in the country where the offense occurred. This is because the provisions regarding punishment for adultery can vary from country to country. Therefore, there are variations or differences in legal provisions in each region in Malaysia regarding the sanctions imposed on perpetrators of adultery.[33]

5) Sharia Criminal Offenses (Federal Territories) Act 1997

For Muslim soldiers, adultery is also regulated under the Sharia Criminal Offenses (Federal Territories) Act 1997, sections 23-27, part 4, concerning offenses relating to modesty.[34]

b. Legal Sanctions for Malaysian Armed Forces (ATM) Personnel Involved in Adultery

The provisions regarding adultery committed by members of the Malaysian Armed Forces are not explicitly regulated in the Armed Forces Act. However, such acts can be categorized as conduct to the prejudice of good order and military discipline and disgraceful conduct. Therefore, soldiers who commit adultery can still be subject to sanctions based on these provisions. The sanctions that can be imposed are as follows:

1) Sanctions Based on the Armed Forces Act 1972

a) Section 83 concerning disgraceful conduct

Penalties that can be imposed include a maximum imprisonment of two years or a lesser sanction in accordance with applicable laws.[35]

b) Section 87 concerning conduct to the prejudice of service discipline

Immoral or indecent acts fall under the category of conduct prejudicial to military discipline, as they are considered to bring the Malaysian Armed Forces into disrepute.

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[31] Pesuruhnya Penyemak Undang-Undang Malaysia, "Undang-Undang Malaysia: Akta Angkatan Tentera 1972" (2006). h. 78-79
[32] Malaysia. h. 79-83
[33] Othman, "Hukuman Bagi Pezina Di Sarawak Malaysia." h. 58
[34] "Syariah Criminal Offences (Federal Territories) Act 1997" (2013). h. 17
[35] Malaysia, Undang-Undang Malaysia: Akta Angkatan Tentera 1972. h. 75

Therefore, such acts may be subject to sanctions, including imprisonment for a maximum of two years or a lesser penalty as stipulated in applicable laws.[36]

c) Section 89 concerning the punishment of officers

This provision emphasizes that if a member of the military commits an offense, they will be punished. However, in cases of adultery, the penalty is dishonorable Discharge from His Majesty's Service, as stated in paragraph (7), because Sections 83 and 87 impose imprisonment for members of the Malaysian Armed Forces who commit adultery.[37]

2) Sanctions Based on the Sharia Criminal Offenses (Federal Territories) Act 1997

For Muslim soldiers, adultery is also regulated under sections 23-27 of the Sharia Criminal Offenses (Federal Territories) Act 1997, part 4, concerning offenses relating to modesty. These sanctions are imposed on the Malaysian Armed Forces found guilty of adultery. The sanctions are as follows:

a) Section 23 concerning sexual intercourse outside of wedlock
   1) Any man found guilty of sexual intercourse outside of a valid marriage is deemed to have committed a violation of the law. The perpetrator may be subject to a maximum fine of RM5,000, imprisonment of up to three years, a maximum of six strokes, or a combination of these penalties.
   2) Any woman found guilty of sexual intercourse outside of a valid marriage is deemed to have committed a violation of the law. The offender may be punished with a maximum fine of RM5,000, imprisonment of up to 3 years, a maximum sentence of 6 strokes, or a combination of these penalties.
   3) The fact that a woman becomes pregnant out of wedlock as a result of sexual intercourse with her consent shall be prima facie evidence of an offense under subsection (2) by that woman.
   4) For the purposes of subsection (3), any woman who gives birth to a fully developed child within 6 months of the date of her marriage shall be deemed to have become pregnant out of wedlock.[38]

b) Section 24 concerning an act preparatory to sexual intercourse of wedlock

Any form of unlawful preparation for sexual intercourse constitutes an offense punishable by a fine of not more than RM3,000, imprisonment for a maximum of two years, or both.[39]

[36] Malaysia. Undang-Undang Malaysia: Akta Angkatan Tentera 1972 h. 76
[37] Malaysia. Undang-Undang Malaysia: Akta Angkatan Tentera 1972 h. 78
[38] Syariah Criminal Offences (Federal Territories) Act 1997. h. 17
[39] Syariah Criminal Offences (Federal Territories) Act 1997. h. 17

c) Section 25 Concerning *Liwat*

Any man found guilty of committing *liwat* is considered to have committed a violation of the law. The perpetrator can be subject to a maximum fine of RM5,000, imprisonment of up to 3 years, a maximum of 6 strokes, or a combination of these three sanctions.

d) Section 26 Concerning *Musahaqah*

Any woman found guilty of *musahaqah* is considered to have committed a violation of the law. The perpetrator can be subject to a maximum fine of RM5,000, imprisonment of up to 3 years, a maximum of 6 strokes, or a combination of these sanctions.[40]

e) Section 27 Concerning *Khalwat*

Anything—A man found with one or more women who are not his wife or *mahram*; or A woman found with one or more men who are not her husband or *mahram*.

In a secluded place, room, or at home in a situation that could give rise to suspicion that they are involved in an immoral act, where the party found guilty of the offence is threatened with a penalty of a maximum fine of RM3,000, imprisonment for up to two years, or a combination of both penalties.[41]

Any wrongdoing that leads to adultery is forbidden in Islam and is punishable depending on its severity. Examples of such offenses include placing a man and a woman together on a bed, engaging in acts of intimacy such as caressing, embracing, and similar conduct. The wrongdoing of *khalwat* is also classified under this category of offenses.[42]

3) Sanctions Based on the Laws Applicable in Each State of Malaysia

There are differences in the regulation of Sharia criminal offenses related to adultery in various regions. This inequality is clearly visible in the sanctions applied, especially in cases of adultery or other moral violations.

a) Sharia Criminal Offenses Enactment of Selangor No. 9 of 1995

Regulations regarding the law of adultery are regulated in the Sharia Criminal Offenses Enactment of Selangor No. 9 of 1995, contained in section 25 relating to extramarital sexual intercourse, which can be grouped into 3 types of sanctions, namely a fine not exceeding RM5,000, then a prison sentence not exceeding 3 years, and a caning/batam punishment not exceeding 6 strokes.[43]

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[40] Syariah Criminal Offences (Federal Territories) Act 1997. h. 18
[41] Syariah Criminal Offences (Federal Territories) Act 1997. h. 18
[42] Mohamad Hanafi Bin Hassim dan Azizah Binti Mat Rashid, "Analisis Terhadap Peruntukan Kesalahan Tatasusila Dalam Enakmen Jenayah Syariah Di Malaysia," *Jurnal Hal Ehwal Islam Dan Warisan Selangor* 1, no. 1 (2017). h. 7
[43] Hayatun Nufus and Halimah Nur Izzati, "Perkembangan Pengaturan Tindak Pidana Perzinaan Di Indonesia (Studi Komparatif: Brunei Darussalam Dan Malaysia)," *Desiserata: Law Review* 1, no. 2 (2024). h. 32

b) Sharia Criminal Offenses Enactment of Sarawak 2001

In section 17 of the Sharia Criminal Offences Enactment of Sarawak 2001 misconduct ordinance, the penalty is a maximum fine of RM5,000 or imprisonment for not more than 3 years or both.[44]

c) Sharia Criminal Offenses (Federal Territories) Act 1997

Section 7 explains the same fine but imprisonment not exceeding two years or both.[45]

4) Stigmatization and Social Impacts on Malaysian Armed Forces Personnel Involved in Adultery

a) Stigma as Violators of Moral and Religious Values

The Malaysian Armed Forces soldiers who commit adultery are generally labeled as immoral individuals and violating religious values.[46] Behavior such as adultery is categorized as an immoral activity that goes against societal culture and religious norms. In the military context, this is considered to violate the values of piety and ethics that soldiers should possess, leading to the stigma of immorality and a lack of personal integrity.

b) Stigma of Damaging the Image of the Military Institution

Adultery among military personnel not only impacts the individual but also creates a stigma against the institution. The Malaysian Ministry of Defense emphasized that immoral acts can tarnish the image and credibility of the national defense institution; the resulting stigma is seen as tarnishing the military's reputation and eroding public trust in the Malaysian Armed Forces.[47]

c) Stigma as a Violator of Military Discipline

The military places great emphasis on discipline, so if adultery is committed by a Malaysian Armed Forces member, it is considered a violation of morality and professional ethics and also an indication of a lack of self-control. In Malaysia, if a Malaysian Armed Forces member commits an act that violates applicable regulations, including adultery, they will be subject to sanctions stipulated in the Armed Forces Act 1972, the Sharia Criminal Offenses (Federal Territories) Act 1997, as well as sanctions based on applicable regulations in each Malaysian state.

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[44] Othman, "Hukuman Bagi Pezina Di Sarawak Malaysia." h. 15
[45] Othman. h. 15
[46] Roskhoirah Yahya, "Aktiviti Tidak Bermoral Dalam Kem Tentera Ancam Keselamatan," Sinar Harian, 2026, https://www.sinarharian.com.my/article/763058/berita/nasional/aktiviti-tidak-bermoral-dalam-kem-tentera-ancam-keselamatan?
[47] Wartawan Scoop, "ATM Diarah Siasat Dakwaan Aktiviti Tidak Bermoral Dalam Kem Tentera," Scoop, 2026, https://www.scoop.my/berita/278570/atm-diarah-siasat-dakwaan-aktiviti-tidak-bermoral-dalam-kem-tentera/?

d) Social Impact

1) The Impact on the Institution's Image and Reputation

When Malaysian Armed Forces members commit immoral acts or adultery, it tarnishes the image, dignity, and professionalism of the Malaysian Armed Forces.[48] From an Islamic perspective, adultery is strictly prohibited and carries severe sanctions for perpetrators. This is because adultery is viewed as a reprehensible act that has the potential to undermine the family institution and damage the moral fabric of society. Therefore, such acts not only affect the individual but can also harm the reputation and image of an institution.

2) Impact on values, culture, and public trust

In the Armed Forces Act 1972, particularly in provisions regarding military discipline (e.g., conduct to the prejudice of good order and discipline), any act that tarnishes honor and discipline, including adultery, is punishable by law because it is deemed to damage the order, morals, and image of the military institution.[49] Furthermore, in the Sharia legal system in Malaysia, such as the Sharia Criminal Offenses Act 1997, adultery is also categorized as a crime that impacts the honor of individuals and society, thus reinforcing the negative stigma against perpetrators, including military personnel, because it concerns violations related to decency, Sharia Criminal Offenses.[50]

3) Decreased Unit Morale and Solidarity (Esprit de Corps)

Adultery can damage the cohesiveness and solidarity among soldiers, disrupting mutual trust among members and even weakening unit solidarity (*esprit de corps*). In the military context, trust and interpersonal relationships are the primary foundations of unit cohesion, so any violation of morale or discipline can raise suspicion, diminish loyalty, and disrupt overall teamwork. Military cohesion itself is built on trust, loyalty, and a sense of togetherness among soldiers in achieving a common goal. When violations such as adultery occur, they can be perceived as a betrayal of moral values and the institution, ultimately damaging internal relationships and diminishing esprit de corps within the unit.[51]

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[48] Berita Ehawal Semasa, "TUDM Tidak Berkompromi Dalam Isu Disiplin, Integriti," Berita RTM, 2026, https://berita.rtm.gov.my/nasional/senarai-berita-nasional/senarai-artikel/tudm-tidak-berkompromi-dalam-isu-disiplin-integriti/?

[49] Malaysia, Undang-Undang Malaysia: Akta Angkatan Tentera 1972. Undang-Undang Malaysia: Akta Angkatan Tentera 1972. h. 76

[50] Syariah Criminal Offences (Federal Territories) Act 1997.

[51] Wibisono, "Batas Moral Kepatuhan: Sebuah Kajian Etika Militer Berdasarkan Clausewiitz Dalam Buku Vom Krieg." h. 2-4

### 3. Analysis of the Regulation of Adultery Offenses in the Indonesian and Malaysian Military

Changes in human civilization, marked by increasingly open relationships between men and women without adequate controls, and easy access to stimulating reading material and broadcasts through soap operas, films, and the internet, have created conditions conducive to the occurrence of adultery. Although technological advancement has provided numerous benefits and conveniences, it also has the potential to encourage behavior that deviates from religious norms and social values. One of the forms of such deviation is adultery. In the military environment, immoral acts or adultery reflect disobedience and damage the image and professionalism of applicable military regulations. In Indonesia, various regulations govern soldiers' lives, ranging from discipline and behavior to the responsibilities of military personnel. One of the acts that violates military law is adultery. However, if a military member violates military criminal law, they generally also violate military disciplinary law.

However, if a soldier commits a violation of military discipline, this does not automatically constitute a military criminal offense. In determining the punishment and sanctions for Indonesian National Armed Forces soldiers found guilty of committing immoral acts or adultery, several legal instruments serve as the basis for regulation. These instruments include military criminal law, general criminal law, and military administrative and disciplinary provisions applicable within the Indonesian National Armed Forces. Among them are the Indonesian Criminal Code, specifically Articles 284 and 281, Law Number 31 of 1997 concerning Military Justice, the Military Criminal Code, and Law Number 25 of 2014 concerning Military Disciplinary Law.

Meanwhile, immoral acts or adultery committed by members of the Malaysian Armed Forces are subject to the Armed Forces Act 1972, contained in sections 83, 87, and 89. In addition, Malaysia also applies Sharia law that regulates certain criminal acts, including adultery, regulated in the Sharia Criminal Offenses (Federal Territories) Act 1997, sections 23-27, if the Malaysian Armed Forces member is Muslim and is proven to have committed adultery. Furthermore, an interesting feature of the Malaysian legal system is that adultery committed by civilians, including Malaysian Armed Forces members commit adultery, there are also rules that apply in each state of Malaysia because the rules that apply in each state in Malaysia are different from one another, such as the Sharia Criminal Offences Enactment of Selangor, Sharia Criminal Offences Enactment of Sarawak, and Sharia Criminal Offences (Federal Territories) Act 1997. This means that the law on adultery in Malaysia, which applies not only to civilians, also applies to the Malaysian Armed Forces, which has three rules. Regarding the implementation of

sanctions, Indonesia has three sanctions for Indonesian National Armed Forces soldiers found guilty of adultery, namely, criminal sanctions, administrative sanctions, and military disciplinary sanctions.

Criminal sanctions are sanctions whose decisions are imposed by the court, while administrative sanctions are sanctions imposed as a follow-up to the imposition of criminal or disciplinary punishment. Meanwhile, military disciplinary sanctions are sanctions imposed for corrective and coaching purposes by correcting mistakes, strengthening loyalty, and increasing discipline towards duties and institutions. Differently, Malaysia imposes sanctions based on legal aspects regarding adultery stated in the Armed Forces Act 1972 contained in sections 88, 87, and 89, the Sharia Criminal Offences (Federal Territories) Act 1997 contained in sections 23-27 part 4 regarding violations related to decency, and sanctions contained in the regulations applicable in each Malaysian state such as the Sharia Criminal Offences Enactment of Selangor, Sharia Criminal Offences Enactment of Sarawak, and Sharia Criminal Offences (Federal Territories) Act 1997.

This is consistent with the Social Control Theory proposed by Travis Hirschi, which states that the control of an individual's behavior lies in the strength of their social relationships with society. The stronger a person's social ties, the greater the individual's tendency to control their impulses to commit crimes and behave in accordance with prevailing norms. Conversely, the weaker the social ties, the greater the individual's likelihood of violating the law by following their own impulses or desires. This theory is used to understand why punishment (sanctions) exist (Kartika & Zaky, 2020). Malaysian regulations related to adultery tend to be normative, and religious values (especially Islam) strongly influence perceptions of violations. Because these regulations are more influenced by religious values, adultery is considered a moral violation and a very shameful act, so the rules tend to be stricter, especially since there are special rules for Malaysian Armed Forces soldiers that regulate sanctions for adultery.

Meanwhile, Indonesian regulations regarding adultery in the military tend to use a pragmatic approach, adapting to the situation and being neutral and not based on a particular religion. Although the legal system provides flexibility because there are many options for witnesses, automatically, all perpetrators are punished equally, thus focusing more on order and discipline. This means that although the legal frameworks differ regarding the rules on adultery, both consider adultery a serious offense that can lead to disciplinary and criminal sanctions, although Malaysia has specific or separate regulations for Muslim military personnel regarding adultery or immoral acts. Meanwhile, the impact of military personnel who commit adultery.

Regarding the stigmatization and impact of adultery committed by the Indonesian National Armed Forces and the Malaysian Armed Forces, they have similarities; both institutions share the view that adultery can damage the image of and bring shame to the military institution. However, the difference is that Indonesian National Armed Forces members who are proven to have committed adultery will be considered to have damaged professionalism and are contrary to the *Sapta Marga* values, especially those related to integrity, honor, and discipline that must be upheld by every soldier. Meanwhile, Malaysian Armed Forces members who are proven to have committed adultery are considered to have harmed the values of piety and ethics that soldiers should have, so that the stigma that arises is considered immoral and seen as lacking personal integrity. This is in line with the stigmatization theory presented by Erving Goffman, who explains that stigma is a sign or attribute linked to a person and functions as a means to inform the public about their social identity, which is often associated with negative labels such as criminals, traitors, or individuals with moral status that is considered deviant. Therefore, stigma refers to social attributes or labels that can worsen a person's image in the eyes of the public, thus potentially leading to discriminatory treatment and social exclusion (Ardianti, 2017).

The impacts experienced by Indonesian National Armed Forces personnel are the loss of trust from other soldiers towards the person concerned, potentially eliminating togetherness in the household, which can ultimately lead to divorce, receiving administrative sanctions that have an impact on delaying promotions, which ultimately affect their career development in the military environment. Meanwhile, the impact received by Malaysian Armed Forces members who are proven to have committed adultery will tarnish the image and dignity and professionalism of Malaysian Armed Forces, strengthen the negative stigma against the perpetrators, including military members because it concerns violations related to politeness, and decline in morale and solidarity of the unit because violations such as adultery, this can be perceived as a form of betrayal of moral and institutional values, which ultimately damages internal relationships and lowers *esprit de corps* within the unit.

## CONCLUSION

The dynamics of sanctions and social impacts on Indonesian National Armed Forces and the Malaysian Armed Forces personnel who are proven to have committed adultery demonstrate differences in approach that are influenced by the value systems and objectives of each institution. In Malaysia, regulations regarding adultery tend to be normative and heavily influenced by religious values, particularly Islam, thus viewing

the act as a shameful moral violation. Conversely, in Indonesia, regulations on adultery within the military are more pragmatic and neutral, not directly based on a particular religion, although they still provide space within their legal systems. Despite these differences in legal frameworks, both countries consider adultery a serious offense subject to disciplinary and criminal sanctions. Malaysia even has specific provisions for Muslim soldiers regarding adultery or immoral acts. In terms of impact, adultery committed by Indonesian National Armed Forces and Malaysian Armed Forces soldiers both have negative consequences, particularly on discipline and trust within the unit. However, the impact on the Malaysian Armed Forces tends to be broader, as it affects not only the military institution but also significantly affects the moral, religious, and social aspects of society.

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