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## Constitutional Morality and Military Necessity: The Legitimacy of Sanctions for LGBT Behavior in the Indonesian National Army

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Received: 2025-12-22

Revised: 2026-01-19

Accepted: 2026-02-05

Published: 2026-02-15

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### Abstract

This research examines the constitutional legitimacy of imposing sanctions on Indonesian National Armed Forces (TNI) personnel engaging in LGBT conduct within the framework of Indonesia's Pancasila legal state. While global discourses often advocate for full inclusivity, this study argues that the restriction of such rights in the Indonesian military context is constitutionally valid and strategically justified. Employing a normative legal research method with statutory, conceptual, case, and philosophical approaches, this study analyzes the intersection between human rights, public morality, and defense strategy. The findings reveal three fundamental justifications. First, Pancasila as the Grundnorm and constitutional morality positions religious values and public ethics as legitimate bases for limiting human rights, as explicitly authorized by Article 28J(2) of the 1945 Constitution. Second, under the doctrine of military necessity, the military operates as a *lex specialis* institution where individual liberties may be curtailed to ensure unit cohesion, command authority, and operational readiness. Third, jurisprudential evidence from military courts demonstrates that sanctions are not directed at sexual orientation as a status, but rather at specific sexual misconduct that disrupts the chain of command and institutional integrity. The study concludes that the dismissal and penalization of LGBT conduct in the TNI are not arbitrary violations of human rights, but proportional measures to uphold the nation's constitutional identity and national defense requirements..

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### Keywords

Constitutional Morality; Human Rights Limitation; Indonesian Armed Forces; LGBT Conduct; Military Necessity.

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## INTRODUCTION

Indonesia constitutionally affirms itself as a state of law based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In modern legal doctrine, this provision is understood as a form of affirmation of the concept of the Pancasila Legal State, which is a model of the state of law that makes Pancasila the basis of philosophy, a source of legitimacy, and fundamental norms that organize the entire legal system (Djauzie, 2025; Rahmatullah, 2020).. In the contemporary era, the position of Pancasila as the foundation of the legal system is increasingly being affirmed through the orientation of the formation of laws and regulations and the national legal reform agenda that requires the conformity of legal products with Pancasila values. Thus, every state policy that intersects with the rights and obligations of citizens is logically built in accordance with the values of Pancasila as (Rangkuti & Amri, 2022;

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Siregar et al., 2024; Smradhana, 2025). *a grundnorm* and is placed in the framework of constitutional law, so that its philosophical, juridical and sociological validity is maintained in the life of the nation and state.

The values contained in Pancasila, especially Godliness, just and civilized humanity, and moral norms are understood as the foundation of public morals and ethics in state life. Pancasila as a constitutional morality functions as an ethical guideline that guides the behavior of state administrators and the formation of legal norms, so that the practice of constitutional administration is always in harmony with constitutional values (Lailam, 2020).. The Indonesian legal system is also aimed at maintaining a balance between the fulfillment of national morality and positive law enforcement by placing the dimension of public ethics as the basis for legal legitimacy (Esfandiari & Widiyanto, 2024). In the realm of law enforcement, the values of Pancasila ensure that state policies not only pursue certainty and order, but also respect for human dignity (Budiyono et al., 2024). In the context of contemporary public ethics, Pancasila is positioned as a moral reference for the behavior of state officials and public figures, so that the state has a normative basis to direct policies that maintain social integrity and religious values that live in society. (Mazid et al., 2025)

In the realm of Indonesia's national criminal law, same-sex intercourse between consenting adults has not been automatically treated as a criminal offense, because the existing criminal regime focuses more on obscene acts involving children, elements of violence, coercion, or other forms of exploitation, rather than on sexual orientation itself (Yunus & Ekawaty Ismail, 2022). However, for members of the Indonesian National Army (TNI), the legal configuration is different. A number of military court decisions, including the Bandung Military Court Decision II-09 Number 231-K/PM II-09/AD/XII/2020, show that the involvement of soldiers in same-sex relationships can lead to imprisonment as well as additional penalties in the form of dismissal from military service, with consideration for maintaining the honor of the corps and the authority of the institution. Thus, LGBT sexual behavior in civil society is often seen as part of the realm of private freedom, in the context of the military, is treated as a violation of the discipline and morals of the army, so that TNI soldiers are subject to a stricter legal and ethical regime than civilians.

In the Indonesian legal system, the existence of criminal law and military disciplinary law is placed as a *lex specialis* that specifically regulates the behavior of TNI soldiers and distinguishes them from the general civil law regime (Fitri Hana et al., 2025; Herawati et al., 2022).. Martial law is designed to maintain discipline, command hierarchy, and internal order

that are prerequisites for the professionalism and combat readiness of the armed forces, so that any violation by soldiers is judged not only as an individual offense, but also as a threat to unit cohesion and institutional credibility (Fitri Hana et al., 2025; Pandjaitan & Khusaini, 2023). Therefore, the state's regulation of the behavior and moral integrity of soldiers is included in the area related to personal life and morality cannot be measured by the neutral standards commonly used in civil society, but must be understood in the framework of the state's defense interests and the role of soldiers as a concrete representation of state sovereignty before the people.

A number of international studies have shown that the presence of personnel with a minority sexual orientation in the military environment does not automatically decrease unit cohesion or organizational effectiveness. The main challenges they face are stigma, internal discrimination, and barriers to accessing health services, which impact their mental health and well-being (Azevedo & Pereira, 2025; Carey et al., 2022; Mark et al., 2019). Therefore, the claim that LGBT sexual orientation in itself undermines trust between soldiers and the psychological stability of troops is more appropriately understood as a normative and political concern that needs to be empirically tested, rather than as an established fact. In the framework of military law and ethics, the discussion of the restriction of individual rights is often referred to the doctrine of *military necessity*, which is a principle that provides a certain space of restriction for the effectiveness of military operations, as long as it remains within the legal and humanitarian corridors regulated by international humanitarian law (Hayashi N, 2020) .

Law enforcement practices in the military justice environment in recent years have shown that cases involving TNI soldiers who commit LGBT crimes tend to be treated as serious violations of military discipline and honor. A review of the Military Court's decision, such as Decision Number 62-K/PM III-16/AD/IX/2019 in the Kodam XIV/Hasanuddin area, shows that the judge not only imposes the main penalty, but also an additional penalty in the form of dismissal from military service as a form of affirmation of sanctions (Djabir T. et al., 2023). Another study confirms that LGBT acts within the TNI are qualified as acts that violate official orders and are categorized as moral violations that can be subject to heavy criminal and administrative sanctions (Hutapea & Rahayu, 2021; Siswayani et al., 2022). This jurisprudential fact is one of the important empirical bases for assessing how the state, through military law, interprets the LGBT behavior of soldiers as an ethical issue as well as a problem related to the image and credibility of defense institutions

However, the implementation of dismissal sanctions against LGBT soldiers has also raised objections from human rights activists. A number of studies consider that the policy has the potential to violate the principles of non-discrimination and equality before the law guaranteed by the constitution, because it makes sexual orientation the basis for differentiating treatment, not on the existence or absence of violence or victimization in the act (Nugraha, 2017; Putri, 2023). In the development of international and regional human rights law, sexual orientation and sexual life are increasingly affirmed as part of the right to private life that demands equal protection and strict testing of any restrictions or different treatment (Shahid, 2023; Winkler & Bantekas, 2025). It is at this point that the philosophical debate hardens: to what extent can the state restrict the individual rights of military members in the name of public morality and defense interests without falling into discriminatory practices that are contrary to constitutional commitments to human rights?

It is at this point that the research gap is clearly visible. Recent studies of LGBT in Indonesia generally move within the framework of human rights and religious discourse, highlighting the tension between universal human rights claims and moral-religious limitations in national law (Majid, 2023; Ulumuddin, 2024; Rohman Hidayad, 2022). At the global level, the debate over the criminalization of sexual minorities is also more formulated in the language of international human rights and state obligations to decriminalize (Winkler & Bantekas, 2025). However, until now, there has been no study that specifically and systematically examines the constitutional legitimacy of sanctioning LGBT soldiers within the framework of *Pancasila as constitutional morality* and the doctrine of Indonesian military law. In other words, this issue has not been adequately placed in the horizon of a typical national legal identity, namely the State of Pancasila Law, thus opening up space for this research to fill the theoretical and practical gap.

The main novelty of this research lies in the analytical approach that does not stop at the perspective of human rights or the issue of criminalization in national criminal law as commonly found in previous research, but develops a comprehensive constitutional justification framework for the application of sanctions against TNI soldiers who commit LGBT behavior. The foundation used rests on three normative foundations that are intertwined: (1) Pancasila as a grundnorm that shapes the nation's constitutional morality and becomes the highest reference in the formation and application of the law, (2) the doctrine of *lex specialis derogat legi generali* in military law which places soldiers in different standards of discipline, honor, and responsibility from civilians, and (3) the principle of military necessity which

provides legitimacy for the restriction of rights individuals to maintain cohesion, command hierarchy, and the effectiveness of national defense tasks. The synthesis of these three frameworks has never been comprehensively formulated in previous academic studies. Therefore, this study provides a new perspective that the criminalization or dismissal of soldiers who perpetrate LGBT behavior cannot be understood solely as a repressive act, but as an instrument of constitutional morality enforcement which is the main character of the Pancasila Law State, as well as a strategy to protect the interests of state defense. This approach strengthens the normative basis for the government and the TNI in making and implementing disciplinary policies consistent with Indonesia's constitutional identity.

Thus, this study fills the gap in the academic literature regarding the constitutional legitimacy of disciplinary action against LGBT soldiers, because the analysis conducted not only assesses the formal legality, but also places this issue in the philosophical and ideological dimensions of national law. Finally, this research is directed to answer fundamental questions about the extent to which the state is authorized to punish soldiers who commit LGBT behavior according to Pancasila and the 1945 Constitution, as well as how the limits of restrictions on individual rights in the military context can be formulated proportionately, legally valid, and constitutionally legitimate

## **THEORETICAL REVIEW**

### **Pancasila as *Grundnorm* and Constitutional Morality**

Pancasila functions as the highest basic norm that is the source of legitimacy and fundamental foundation for the entire Indonesian legal system *that* regulates the structure and orientation of laws and regulations (Djauzie, 2025). This position makes Pancasila not just a political ideology, but a binding legal norm in the hierarchy of national norms (Siregar et al., 2024). Therefore, all forms of norms, public policies, and actions of state administrators must be consistent with the values outlined in Pancasila in order to have philosophical and constitutional validity (Smradhana, 2025).

The values of God, Humanity, Unity, People, and Social Justice contained in Pancasila form a framework of public morality that is the main reference for the implementation of national law. Morality is not just an ethical preference of the community, but a constitutional mandate to maintain the sustainability of the nation's basic values in every act of government (Junaidi et al., 2022). In that context, the state is authorized to regulate the behavior of the

community including sexual behavior that is considered contrary to religious norms and morality as an implementation of the conception of the Pancasila Law State which rejects legal neutrality on public moral issues (Djauzie, 2025; Smradhana, 2025). Thus, restrictions on certain behaviors can be justified as long as they aim to maintain the nation's ideological identity and are consistent with Indonesia's constitutional foundation (Djauzie, 2025; Junaidi et al., 2022).

### **Martial Law as a *Lex Specialis* in the State of Pancasila Law**

As part of the constitutional system, members of the TNI are under a different legal regime than civilians where special norms apply based on the principle of special norms (*lex specialis*) as studied by Irfani (2020). This means that when military law specifically regulates military discipline, command, and responsibilities, general civilian norms do not automatically apply to military personnel when there are relevant military regulations. Within this framework, violations committed by TNI soldiers must be processed through a military legal mechanism, not a general justice system, to enforce the command hierarchy and maintain institutional unity. (Irfani, 2020; Jowan & Zukriadi, 2025)

The normative and practical consequence is that the moral and ethical standards of soldiers are seen so much higher in terms of loyalty, discipline, and representation of state sovereignty that behavior that in civilian society may be considered mild or private, in the military context can be seen as a serious violation of the discipline and honor of the unit. In case research, cases of TNI soldiers with LGBT orientation or behavior have been resolved through the military justice system, as part of the application of internal military law and discipline in Indonesia, rather than civilian criminal law (Siswayani et al., 2022)..

### **The Doctrine of *Military Necessity* as the Legitimacy of Restrictions on Soldiers' Rights**

The principle of military necessity in international humanitarian law provides a justification for restricting the rights of individual military personnel to the extent that such restrictions are necessary to support the success of defense operations and command stability. Thus, the rules that apply to soldiers can be stricter than those of civilians, especially when the rights of those individuals have the potential to impede the interests of state security and military effectiveness (Prasetyo, 2016; Zuhra & Almira, 2021). In a normative context, the restriction of rights by military institutions is not a form of repressive action alone, but an

integral part of the command and discipline system needed to ensure that soldiers carry out their functions optimally at the behest of the state (Diana, 2023).

In the TNI, the issue of LGBT behavior of soldiers is often associated with the potential for disturbance of unity harmony, loyalty, and command professionalism due to emotional closeness factors that can give rise to official bias. Findings in various jurisdictions show how certain sexual orientations are perceived to have an impact on command objectivity and troop cohesion, so they are treated as violations of military discipline that can be subject to administrative sanctions to military penalties (Allen et al., 2025; Siswayani et al., 2022). Thus, the restriction of rights on the basis of sexual orientation in the military context is placed as a form of official accountability and protection of defense purposes, not as unfounded discrimination.

### **Sexual Orientation and Sexual Behavior in a Legal Perspective**

From the perspective of criminal law and military law, there is a clear distinction between sexual orientation as a personal identity and sexual behavior as a legal act. Sexual orientation is part of an individual's private rights and conditions that cannot be punished, while the law is authorized to crack down on sexual behavior that has an impact on the public interest, public morality, or social order. This thinking is affirmed in the study that the criminalization of sexual minorities often exploits identity status rather than actual actions, even though criminal justice ideally requires legal action (*actus reus*), not identity alone (Arimoro, 2021; Winkler & Bantekas, 2025).

In the military context, the focus of the law is not on the sexual identity of soldiers, but on behaviors that have the potential to disrupt discipline, command structure, and unit cohesion. Therefore, a number of legal analyses confirm that sexual acts that are considered to threaten professionalism and discipline can be sanctioned within the framework of state defense (Arimoro, 2021). This is in line with the principle that the object of law is an action that poses a risk to security and order, not a person's own state. Therefore, the criminalization of soldiers who perpetrate deviant sexual behavior is understood as a form of enforcement of official discipline directed at its social and military impact while maintaining the principles of legality, proportionality, and protection of human rights.

### **Protection of Rights and the Principle of Proportionality in the Pancasila State of Law**

Within the framework of the Pancasila State of Law, the restriction of the rights of TNI soldiers can be justified as long as it is enforced based on the principle of proportionality,

namely sanctions must have a valid legal basis, be directed to the constitutional interests of state defense, and do not exceed the limits of official needs. This principle is in line with the theory of criminality that emphasizes the need for a equivalence between the offense and the punishment imposed (Dachak, 2021). In line with the doctrine of *lex specialis* military law, the behavior of soldiers who are considered to threaten the discipline, command structure, and cohesion of the unit, including same-sex sexual behavior, can be sanctioned as a constitutional measure to maintain the honor and effectiveness of military institutions militer (Winkler & Bantekas, 2025).

However, the application of these sanctions is still obliged to uphold the principles of respect for human dignity and justice as the basic values of Pancasila, so that restrictions do not shift to discrimination based on sexual identity. The literature confirms that criminalization should not be directed at personal status, but rather at actions that visibly pose a risk to order and security. Thus, law enforcement against soldiers who commit LGBT behavior must be positioned as a legitimate effort to maintain the honor and stability of the TNI, as long as it is carried out proportionately, objectively, and does not exceed the limits of state defense. (Arimoro, 2021)

### **The Relationship between Human Rights and Public Morality in the Indonesian Legal System**

In the Indonesian constitutional system, human rights are recognized as fundamental rights, but their implementation can be limited through laws to protect the rights of others, public morality, religion, security, and public order as reflected in Article 28J paragraph (2) of the 1945 Constitution. The restriction is understood not as a denial of human rights, but as a form of harmonization between individual freedom and broader social interests. The latest literature emphasizes that in the context of the Pancasila Law State, human rights restrictions must always meet the principles of legality and proportionality in order to remain in line with the constitutional goal of maintaining order and national values (Arief Fahmi Lubis, 2024; Sugirman et al., 2025).

In the context of public morality and the collective identity of Indonesian society, divine values and religious norms have an important position in shaping public ethical standards. Therefore, a number of studies confirm that the state can apply regulations to behaviors that are considered detrimental to morality and social order, including same-sex sexual behavior, as long as they are constitutionally formulated and do not exceed the need for social protection

(Hanum & Sabri, 2023; Majid, 2023; Manik et al., 2021). Such an approach is increasingly relevant in a military environment that demands discipline, unit cohesion, and institutional honor as part of the defense of the country. Restrictions on LGBT behavior in the military, therefore, can be considered juridical-philosophically valid if they meet the principles of justice, proportionality, and still uphold human dignity as the basic value of Pancasila.

Based on this analysis, the relationship between human rights and public morality in the Indonesian legal system is not a dichotomous relationship that affirms each other, but a relationship that is complementary. Restrictions on LGBT behavior within the TNI cannot be seen as a violation of human rights as long as they are carried out based on the principles of legality and proportionality. In fact, the policy is a form of substantive justice within the framework of the Pancasila Law State that still upholds human dignity, but at the same time protects the basic values of the nation and the interests of state defense.

Thus, this framework is a theoretical basis for assessing whether restrictions on the LGBT behavior of TNI soldiers can be constitutionally and proportionately justified in the Pancasila State of Law. This also directs the analysis in the next section regarding the application of military law norms and juridical considerations in the enforcement of discipline against TNI soldiers who commit LGBT behavior.

## **RESEARCH METHOD**

This study applies a prescriptive normative legal research method to evaluate the legal coherence between constitutional norms and the application of military law in Indonesia. The main focus of the study is on analysing positive legal norms and constitutional principles interpreted through doctrinal and philosophical reasoning. In order to produce a comprehensive analysis, this study simultaneously integrates four main approaches. First, the statute approach is used to examine the vertical harmonisation between the 1945 Constitution of the Republic of Indonesia, Law No. 34 of 2004 on the Indonesian National Armed Forces, and the Military Criminal Code in order to dissect the basis of sanctioning authority. Second, the conceptual approach is applied to analyse the doctrines of military necessity, *lex specialis*, and constitutional morality as the theoretical basis for justifying restrictions on rights. Third, the case approach focuses on examining the consistency of the application of norms in military court decisions related to immoral behaviour. Finally, the philosophical approach is used to explore the values of Pancasila as the Grundnorm that forms the basis of the constitutional morality of state actions.

The process of collecting legal materials was carried out through systematic library research of primary and secondary sources to ensure accuracy and avoid selection bias. Primary legal materials included core national defence regulations (1945 Constitution, Military Criminal Code, Criminal Code, TNI Law) and military court decisions selected based on strict inclusion protocols. The criteria for selecting decisions are limited to: (1) decisions that have been published in a decision directory or academic database; (2) specifically containing elements of same-sex indecency in the workplace; and (3) published within the last five years to ensure the empirical data is up to date. In addition, secondary legal materials were curated from accredited journal articles, military law textbooks, and the latest academic literature obtained through reputable scientific databases such as Scopus, ScienceDirect, and SINTA.

All collected legal materials were analysed qualitatively and normatively using deductive reasoning, i.e., drawing conclusions from major premises in the form of constitutional norms and principles of national defence to minor premises in the form of legal application in concrete cases. The analysis technique also used prescriptive methods to formulate legal arguments and policy recommendations related to handling disciplinary violations involving LGBT behaviour. To ensure the validity of the arguments, the analysis results were validated through theoretical triangulation with the provisions of the 1945 Constitution and the doctrine of military necessity. Through this methodology, the study is expected to produce an objective legal construct regarding the legitimacy of military sanctions based not only on the text of the rules but also on the philosophical dimensions and strategic needs of national defence.

## **RESULTS AND DISCUSSION**

### **Constitutional Assessment of LGBT Behavior in the Perspective of Pancasila**

Pancasila as the basis of state philosophy is a grundnorm that guides the political direction of national law and becomes a parameter of moral constitutionality in every formation and application of law (Djauzie, 2025; Esfandiari & Widiyanto, 2024).. Therefore, the exercise of human rights cannot be seen as an absolute right free from the limitations of common values. Especially in the context of the precepts of the One Godhead, religious norms and public morality gain legitimacy as a source of public ethics that are used as a reference in controlling the behavior of citizens (Budiyono et al., 2024; Hanum & Sabri, 2023).

Restrictions on certain behaviors are explicitly justified by the constitution through Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as long as they aim to maintain public morality, public order, and national security (Arief Fahmi Lubis, 2024;

Siregar et al., 2024). This is even more reasonable in the military context because TNI soldiers hold a strategic function as the main component of state defense based on Article 30 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. With this position, the state is obliged to maintain the professionalism, discipline, and internal cohesion of the military as a higher constitutional interest.

Correspondingly, a number of contemporary studies show that the military environment has a hierarchical command structure and an institutional masculinity culture that is highly sensitive to soldiers' interpersonal behavior, including related to sexuality. Therefore, sexual behavior that has the potential to trigger psychosocial conflicts, reduce trust between soldiers, or interfere with the effectiveness of the implementation of duties can be positioned as an official issue, not just a private matter. (Azevedo & Pereira, 2025; Carey et al., 2022)

Nonetheless, the use of laws and military policies to address LGBT behavior must pay attention to the principles of proportionality, non-discrimination, and uphold human dignity as the core of Pancasila and the character of the modern state of law. Empirical research shows that stigmatization and discrimination against LGBT soldiers have the potential to cause psychological pressure and degradation of official performance (Azevedo & Pereira, 2025; Carey et al., 2022).. Thus, restrictions can only be justified if they are directed at the impact of the defense, not on the basis of their sexual orientation.

With these considerations, it can be emphasized that Pancasila as a constitutional morality provides space for the state to regulate LGBT behavior in the military environment, but it must be implemented within an objective, rational, and proportionate legal framework so as not to contradict the principle of substantive justice which is also Pancasila's command.

### **Status, Role, and Responsibilities of TNI Soldiers in the Pancasila Rule of Law**

In the Indonesian constitutional system, TNI soldiers have a special position that is distinguished from civilians in general because of their strategic function as the main component of state defense according to Article 30 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The constitutional position demands higher standards of discipline, loyalty, and integrity to ensure combat preparedness and public trust in military institutions (Herawati et al., 2022; Pandjaitan & Khusaini, 2023).. The state's obligation to maintain the professionalism of the TNI is a form of implementing constitutional orders to ensure national security.

Within the framework of the Pancasila State of Law, restrictions on the rights of soldiers are considered juridically valid if they aim to maintain the command hierarchy, internal cohesion, and effectiveness of the implementation of defense duties (Arief Fahmi Lubis, 2024; Esfandiari & Widiyanto, 2024).. This also reflects the character of the military as a *lex specialis* which has stricter internal rules than general law in order to protect the interests of the nation as a whole (Fitri Hana et al., 2025; Siswayani et al., 2022).

Contemporary research also shows that the dynamics of interpersonal relationships in a highly hierarchical military environment can affect the psychological stability of the unit, so that the individual behavior of TNI members cannot always be positioned as a private issue. Factors such as trust, respect for command, and emotional stability among soldiers are important variables in maintaining military professionalism.(Azevedo & Pereira, 2025; Carey et al., 2022). Therefore, sexual behavior that has the potential to provoke jealousy, internal conflict, or a decline in the morality of the forces can be the basis for legitimate legal restrictions. However, the principle of restriction should not be translated into a repressive attitude that ignores human dignity as a subject of law. In line with the human values in Pancasila, every soldier must still be treated with the guarantee of procedural justice and the protection of his basic rights (Diana, 2023; Majid, 2023) . The policy of restrictions must be directed at overcoming the impact of the official, not the punishment of personal identity.

Thus, the status of TNI soldiers based on the mandate of the constitution provides strong legitimacy for the state to limit certain behaviors in maintaining the effectiveness of state defense. However, these restrictions must be carried out within the corridor of Pancasila values and the principle of substantive justice so as not to deviate into discrimination that is contrary to the dignity of soldiers as Indonesian citizens.

### **The Legitimacy of Military Law as a *Lex Specialis* in the Criminalization of LGBT Behavior**

In the Indonesian legal system, military law is placed as a *lex specialis* that has the authority to override general law when it comes to the performance of military duties and service. This principle is not only a legal reasoning technique, but a direct implementation of the TNI's function as a protector of state sovereignty so that it requires stricter internal arrangements than civilians sipil (Fitri Hana et al., 2025; Herawati et al., 2022). Therefore, acts that in the realm of civil society are seen as private affairs, can be qualified as a violation of

official duties if they have the potential to disrupt the stability of the command structure and the effectiveness of state defense

From a constitutional perspective, restrictions on the behavior of soldiers, including those related to LGBT issues, derive legitimacy from Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which stipulates that the exercise of human rights can be restricted in the interests of public morality, order, and national security (Arief Fahmi Lubis, 2024; Siregar et al., 2024).. Because the military environment depends on unit cohesion, hierarchical compliance, and strict discipline, violations that have the potential to pose psychosocial risks and dysfunction of the command structure can be subject to criminal and administrative sanctions as a form of maintaining the professionalism of the TNI (Pandjaitan & Khusaini, 2023; Siswayani et al., 2022).

Empirical studies show that poorly managed interpersonal dynamics within military units, including same-sex relationships between soldiers, can create internal tensions that disrupt combat readiness and the image of defense institutions (Azevedo & Pereira, 2025; Carey et al., 2022). Therefore, the criminalization of LGBT behavior in the military context must be positioned as a corrective action for the impact of the service, not as a criminalization of one's inherent sexual orientation (Diana, 2023; Majid, 2023).

Although military law has specificity, its application is still obliged to pay attention to the principle of proportionality and the protection of human dignity, as it is the character of national law based on Pancasila. Thus, the legitimacy of *lex specialis* should not be interpreted as a repressive authority that erases the basic rights of soldiers, but as a mechanism to maintain the effectiveness of state defense according to the constitutional mandate. Thus, it can be affirmed that the legitimacy of the criminalization of LGBT behavior in the military environment has a strong constitutional foundation, but it remains bound by the principle that any restriction on the rights of soldiers must be oriented towards the real impact of the service, fair in procedures, and in line with the values of Pancasila as the constitutional morality of the nation.

### **The Doctrine of *Military Necessity* and the Principle of Proportionality as the Basis for Justifying Sanctions**

In military law, the restriction of the rights of soldiers and the punishment of official violations are based on two principles that are the main foundations, namely the doctrine of military necessity and the principle of proportionality. Military necessity is a principle in defense law that gives the state the authority to apply restrictions or punitive measures if

necessary to maintain combat readiness, unit security, and the continuity of military strategic functions (Hayashi N, 2020; Pandjaitan & Khusaini, 2023). In the context of the TNI, the sustainability of the country's defense function demands that every soldier's actions must be subject to broader military interests than personal interests.

This principle cannot stand alone without being associated with the principle of proportionality. This principle requires that the restriction of rights must be limited to a level that is necessary, lawful, and balanced by the threat to defense interests (Arief Fahmi Lubis, 2024; Dachak, 2021). Therefore, the criminalization of soldiers who perpetrate LGBT behavior can only be justified when there is a real impact that disrupts unit cohesion, command authority, or official morality not simply based on a person's inherent sexual orientation (Diana, 2023; Majid, 2023)

A number of studies show that military institutions are particularly sensitive to interpersonal behavior that can lead to jealousy, risk of harassment, decreased trust, and protracted official conflicts (Azevedo & Pereira, 2025; Carey et al., 2022).. Under such conditions, the application of internal sanctions is seen as a preventive effort to protect the effectiveness of the command and the psychological stability of the unit. However, international studies also warn that non-objective restrictions have the potential to stigmatize and mentally pressure sexual minorities in the military, which can ultimately interfere with the performance of the soldiers themselves (Aldahondo & Cole, 2023; Ruiz et al., 2024)

Thus, the application of the doctrine of military necessity and the principle of proportionality in the context of regulation of LGBT behavior must always be tested through the standards of legality, rationality, and justice in the Pancasila Law State. This means that sanctions can only be imposed if the behavior causes concrete consequences for the service, and is carried out through a legal mechanism that guarantees the right to defend soldiers. It is this framework that ensures that state actions remain constitutional, professional, and do not turn into discrimination that violates human dignity.

### **Comparison of LGBT Policies in the Military in Several Countries**

Policies for LGBT soldiers in the military in different countries differ significantly. These differences are mainly determined by state ideology, constitutional structure, and national defense doctrine. Thus, there is no uniform universal standard regarding the status of LGBT people in the military environment, as each country adapts it to national strategic interests. (McGill et al., 2025; Shahid, 2023)

Liberal countries such as the United States and the United Kingdom have adopted a full inclusion model based on the principle of human rights nondiscrimination. The United States formally repealed the Don't Ask Don't Tell policy in 2010 and allowed military members to openly declare their sexual orientation (Carey et al., 2022). Nevertheless, the findings of the new research suggest that this integration poses new sociological challenges in the form of the risk of sexual harassment, interpersonal friction, and a decrease in psychological security for some personnel (Aldahondo & Cole, 2023; Schuyler et al., 2020). Similar conditions are also found in the British liberal policy of opening military access to LGBT groups. Studies reveal that historical stigma still causes long-term moral trauma for LGBT veterans.

In contrast, countries that make the military an institution with strict order and patriarchal command, such as Russia, China, and several Muslim countries including Indonesia, place the LGBT issue as a matter related to public morality and national security (Majid, 2023). In this context, explicit prohibitions or restrictions on LGBT behavior are considered essential to maintain the stability of military organizations, the integrity of the command hierarchy, as well as the cohesion of units in high-risk fields of duty (Azevedo & Pereira, 2025; Pandjaitan & Khusaini, 2023). Therefore, restrictions are not carried out on sexual identity, but on behavior that causes disturbances in office

This comparative study shows that in the global discourse there are two models of regulation: (1) the liberal-inclusive model and (2) the conservative-prohibitive model. Indonesia's policy choices are theoretically in the second model, which prioritizes the doctrine of military necessity and constitutional moral values, in line with the character of Pancasila and the 1945 Constitution of the Republic of Indonesia. This position shows that restrictions on LGBT behavior within the TNI still have strong philosophical, juridical and sociological legitimacy within the framework of the Pancasila State of Law.

Thus, this comparative analysis confirms that Indonesia's policy is not an anomaly or a form of unfounded discrimination, but a choice of national defense policy that is proportionate and in accordance with the country's ideological foundation. This finding also provides a basis for justification for the argument that every country has a constitutional right to adjust its military regulations to the basic values of its nation.

### **Analysis of Law Enforcement Cases Against LGBT Soldiers in the Indonesian Military Environment**

Law enforcement against TNI soldiers who commit LGBT behavior is a domain of military law that has been discussed in various studies. The overall study showed a consistent

pattern of punishment: sanctions are imposed when behavior is proven to cause a real disturbance to the military's official authority, cohesion, and authority, not because of the sexual orientation of the perpetrator (Hutapea & Rahayu, 2021; Siswayani et al., 2022; Diana, 2023).

As elucidated by Hutapea & Rahayu (2021), military judges consistently invoke Article 103(1) of the Military Criminal Code (KUHPM) regarding disobedience to service orders as the primary legal basis for conviction. Furthermore, judicial reasoning often emphasizes that same-sex misconduct undermines the integrity of the corps. Consequently, judges frequently impose Dishonorable Discharge (known locally as *Pemecatan Tidak Dengan Hormat* or PTDH) under Article 26 of the KUHPM, categorizing such conduct as a fundamental breach of the soldier's oath that renders them unfit for continued service.

Dewi (2021) confirmed a similar pattern of argumentation in immoral cases that occurred in the headquarters environment. The judge emphasized that the violation was not just a matter of sexual orientation, but related to the impact on professionalism and combat preparedness. In line with that, Siswayani et al. (2022) found a new trend of violations through social media that are considered to worsen subordination in the command structure, trigger disruption of institutional authority, and tarnish the image of the TNI as a national defense institution.

Based on the overall decisions analyzed, three generic patterns of violations can be formulated as follows.

**Table 1.** Typology of LGBT Behavior Cases and Patterns of Sanctions in the Indonesian Military Environment

<b>Typology</b>	<b>Forms of Behavior</b>	<b>Impact on the Official Service</b>	<b>General Sanctions</b>	<b>Judge's Argument</b>
<b>A</b>	Sexual intercourse with fellow soldiers in barracks/dormitories	Loss of trust, disruption of unit cohesion	PTDH + Criminal Confinement	Threatening the discipline and values of Sapta Marga
<b>B</b>	Obscene/explicit behavior through social media	Distortion of the command relationship, weakening subordination	Dishonorable Discharge (PTDH)	Undermining the authority of institutions
<b>C</b>	Intense emotional relationships in the headquarters environment	Psychological conflicts, internal jealousy	Severe Disciplinary Sanctions	Interfering with task and operational readiness

(Source: analysis of decision patterns in Hutapea & Rahayu, 2021; Dewi, 2021; Sembiring, 2021; Siswayani et al., 2022)

Based on an analysis of the judges' ratio decidendi in Table 1, this study found a significant pattern: severe sanctions (Dishonourable Discharge) were not imposed solely because of the defendant's sexual orientation. Instead, our interpretation shows that judges consistently use the doctrine of 'military necessity'—albeit often implicitly—by emphasizing the destructive impact of such behaviour on unit cohesion and the chain of command. This proves that Indonesian military law focuses on 'conduct' that disrupts operations, rather than simply judging identity 'status'. The causal relationship between the violation → the impact → the legal basis → sanctions can be visualized as follows.

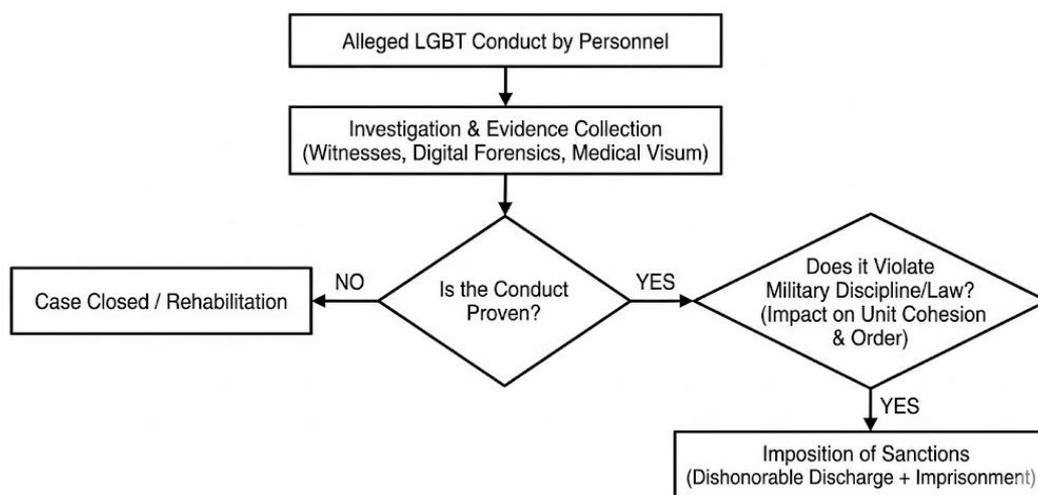


Figure 1. Juridical Assessment Flow of LGBT Conduct

Thus, field findings show that the military judge's argument always rests on military necessity, namely maintaining combat readiness and military honor, as well as the principle of proportionality, where sanctions are adjusted to the level of official disturbance (Dachak, 2021; Pandjaitan & Khusaini, 2023). This principle ensures that the punishment is not discriminatory, but aims to fulfill the TNI's constitutional obligations as the main component of national defense.

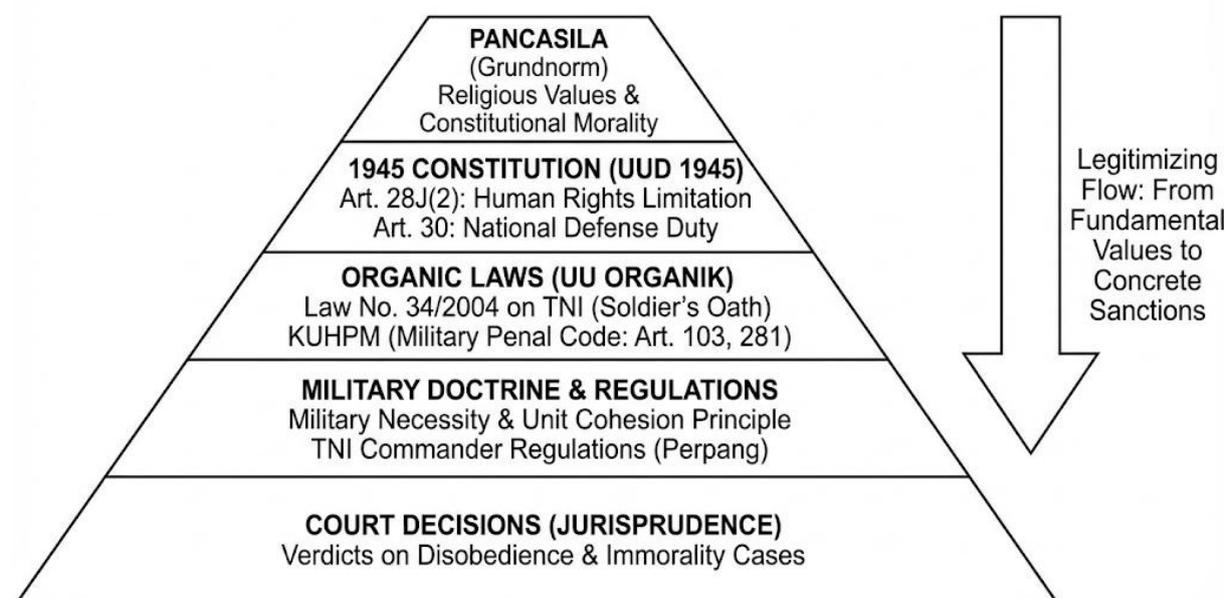
These empirical findings are the direct basis for formulating a conceptual model of legal legitimacy in imposing sanctions on soldiers who commit LGBT behavior, which will be described systematically in the next sub-chapter.

### Conceptual Model of State Legitimacy Punishes TNI Soldiers for Perpetrators of LGBT Behavior

Restrictions on LGBT behavior against TNI soldiers are not just a matter of individual morality, but part of fulfilling the state's constitutional obligation to ensure that the main

components of defense are always in the best psychological, disciplined, and professional condition. To comprehensively understand the legitimacy of these restrictions, it is necessary to construct a hierarchical construction that establishes the relationship between Pancasila as constitutional morality, the 1945 Constitution of the Republic of Indonesia as a framework for restricting human rights, the Criminal Code as a *lex specialis* for enforcing military discipline, and the doctrine of military necessity which affirms that the restriction of rights can be justified to maintain the effectiveness of state defense. ( Djauzie , 2025; Esfandiari & Widiyanto, 2024)

To clarify the flow of legitimacy of such restrictions on rights, the following hierarchical model describes the systematic relationship between basic values, constitutional norms, and the strategic interests of state defense.



**Figure 2.** The Hierarchy Model of State Legitimacy Punishes LGBT Soldiers in the Perspective of the Pancasila Law State

This normative architecture demonstrates that within the Indonesian legal framework, human rights are not conceived as absolute, unrestricted concepts. We argue that Article 28J(2) of the 1945 Constitution functions as a critical 'constitutional safety valve,' legitimizing the state's authority to prioritize public morality and religious values over individual sexual expression when national interests are at stake. Consequently, the restrictions imposed by organic laws such as the TNI Law and the KUHPM are not arbitrary mandates but are firmly rooted in the nation's supreme constitutional identity. This hierarchical coherence provides the

fundamental juridical legitimacy for the state to regulate the conduct of its military apparatus distinct from civilian society.

At the philosophical level, Pancasila places the values of Belief in God and Morality as public moral guidelines that reject behaviour contrary to religious teachings and moral order (Budiyono et al., 2024; Majid, 2023). At the second level, the Constitution allows for certain restrictions on rights to ensure public morality and national order and security as stipulated in Article 28J paragraph (2) (Arief Fahmi Lubis, 2024). At the next level, the KUHPM, through Articles 26, 87, 95, and 103, ensures that the behaviour of soldiers does not undermine the command hierarchy, unit cohesion, and the authority of the TNI institution (Herawati et al., 2022; Siswayani et al., 2022). Furthermore, the doctrine of military necessity serves as an operational basis that any action or behaviour that threatens combat readiness must be limited proportionally (Dachak, 2021; Pandjaitan & Khusaini, 2023). Ultimately, all these restrictions are aimed at ensuring the strategic interests of national defence, namely internal unit stability, command authority, and the effectiveness of defence tasks (Azevedo & Pereira, 2025). This hierarchical construction confirms that the criminalization of soldiers who perpetrate LGBT behavior is not based on hatred of sexual identity, but on objective demands to maintain the effectiveness of the country's defense. Thus, the legitimacy of the restriction of rights for TNI soldiers is philosophical-constitutional-normative-strategic, and consistent with the principles of the Pancasila State of Law.

## **CONCLUSION AND RECOMMENDATIONS**

### **Conclusion**

This study has demonstrated that the restriction and penalization of LGBT conduct within the Indonesian National Armed Forces (TNI) possess strong constitutional and juridical legitimacy. Contrary to the dominant universalist human rights perspective which often categorizes such sanctions as arbitrary discrimination, this research concludes that these measures are a constitutionally valid manifestation of Indonesia's distinct Constitutional Morality based on Pancasila and the universal doctrine of Military Necessity.

The legitimacy of these sanctions rests on three fundamental pillars established in this study. First, philosophically and constitutionally, the state is mandated by Article 28J(2) of the 1945 Constitution to limit specific individual rights to uphold public morality and religious values, which serve as the nation's *Grundnorm*. Second, doctrinally, the military operates as a *lex specialis* institution where the imperatives of unit cohesion, chain of command, and

operational readiness supersede individual liberties. Third, empirically, jurisprudential evidence from military courts confirms that sanctions—including Dishonorable Discharge—are strictly imposed not based on sexual orientation as a status, but on specific misconduct that is proven to disrupt institutional integrity and discipline.

Ultimately, this study offers a significant theoretical contribution by presenting a counter-narrative to the Western liberal model. It argues that in the context of Indonesia as a Pancasila Law State, the regulation of soldiers' sexual conduct is not a violation of human rights, but a proportional and necessary strategy to safeguard the nation's defense capability.

### **Suggestions**

Based on the results of the research, the author recommends that the government and the TNI immediately strengthen a more explicit internal regulatory framework in regulating same-sex immorality in military service. This regulatory change is needed to realize legal certainty, uniformity of interpretation, and the effectiveness of enforcement of official discipline, considering the increasingly complex social dynamics and the development of human rights issues that continue to develop.

In addition, the author proposes that the TNI strengthen the function of moral-mental and ideological development through religious education programs, military psychological counseling, and periodic assessments of the emotional and personality stability of soldiers. This coaching must be carried out systematically and preventively, not only when violations occur, so as to create a strong military culture that is resilient to negative influences that have the potential to disrupt the internal cohesion of the unit.

The military justice mechanism also needs to be strengthened by placing the principles of proportionality and accountability as the main foothold in the criminalization of soldiers who commit LGBT behavior. The imposition of sanctions must always take into account the level of threat to the service, its impact on the honor of the institution, and the opportunity for the recovery of soldiers' behavior.

Finally, the advanced research agenda is important to be carried out by expanding the object of study on psychosocial aspects and leadership patterns in military units, as well as comparative studies with countries that have similar ideologies and defense systems to Indonesia. The results of the follow-up research are expected to be able to enrich military policies in dealing with issues of morality, human rights, and national defense in the future..

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