

LEGAL ANALYSIS OF THE APPLICATION OF ADDITIONAL CRIMINAL SANCTIONS OF DISMISSAL FOR TNI SOLDIERS CONVICTED BY NARCOTICS (Study of Military Court Decision I-02 Number 109-K/PM.I-02/AL/XI/2022)

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ABSTRACT

Law enforcement against narcotics crimes has been widely carried out by law enforcers, also many perpetrators have been sentenced to court decisions and are serving sentences in correctional institutions, including abuse of narcotics by unscrupulous members of the TNI. The results of the study show that criminal law arrangements for narcotics abuse are regulated in RI Law no. 35 of 2009 concerning Narcotics. Criminal liability for members of the TNI who commit criminal acts of drug abuse in the decision of the Medan Military Court I-02 Number 109-K/PM.I-02/AL/XI/2022 is basically an act of deterrence as an effort to provide learning for members of the TNI to obey and comply with the rules and avoid all actions that are prohibited because this responsibility will always be attached to members of the TNI. Members of the TNI who commit criminal acts of narcotics abuse with the principal punishment being imprisonment for 6 (six) years and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) as well as additional punishment being dismissed from Military service Cq.TNI AL.

1. Introduction

Law is believed to be a tool to provide equality and certainty in social interactions. Like any tool, law is needed when extraordinary needs or circumstances arise in society. An act is not considered a crime unless it is expressly stipulated in the Criminal Code (KUHP) or other criminal provisions. This principle remains the foundation for ensuring legal certainty.

Crime, as a social phenomenon occurring throughout the world, will never end in line with the development of social dynamics within society. Among the various crimes occurring in society, one is the crime of forgery. Counterfeiting is a widespread phenomenon today, occurring in various forms. Moreover, in the modern era, where rapid technological advancements have made it easier for perpetrators to commit crimes.



In practice, not only civilians can fall prey to criminal acts, but also members of the Indonesian National Armed Forces (TNI). This is regrettable, considering that the TNI's primary function is national defense and security. In the military, obedience and compliance are closely linked to a soldier's adherence to their duties, which are based on the Sapta Marga (Sword of Honor) and the Soldier's Oath. Based on the Soldier's Oath, every member of the Indonesian National Armed Forces (TNI) must obey the law and uphold military discipline.

Actions by TNI soldiers, whether individually or in groups, that violate legal provisions or other norms applicable to daily life, or that conflict with official regulations, discipline, and the TNI's code of conduct, are essentially acts that damage the TNI's dignity and reputation. If such actions are allowed to continue, they can cause unrest and unrest in society and hinder the development and advancement of the TNI.

When examining and deciding a case, general criminal law, which applies to everyone, also applies to every member of the military. However, within the military, there are provisions that deviate from those contained in the Criminal Code. These specific provisions are regulated in the Military Criminal Code. In other words, if the crime committed is not regulated in the Military Criminal Code, the Criminal Code applies unless there is a deviation.

One form of crime that occurs in society is drug crime. Drug abuse and illicit trafficking are currently a national and international issue. Various efforts undertaken by the international community, including Indonesia itself, have yet to reduce the illicit trafficking of narcotics by organized crime. The definition of organized crime itself focuses more on the "method" of committing crimes, or modus operandi. Therefore, in this sense, a criminal organization is an organization established by criminals to optimize the achievement of their evil goals.

Drug crimes are not only committed within civilian circles; however, document forgery can also be committed by members of the military, namely members of the Indonesian National Armed Forces (TNI), who are state officials. Legally, military personnel have the same status as ordinary members of the public. This means that as citizens, all applicable laws, including criminal law, criminal procedure law, civil law, and civil procedure law, apply to them. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "all citizens are equal before the law and the government and are obliged to uphold the law and the government without exception." No citizen is immune from the law, even civilians or members of the Indonesian National Armed Forces (TNI) who commit crimes. The TNI is part of society, therefore the TNI is also obliged to comply with general regulations, namely the Civil Code and specific legal





regulations, namely the KUHPM (Military Criminal Code), which serves as a guideline for military criminal law.

To maintain the balance of discipline in the life of soldiers within the TNI, especially so that the perpetrator's unit is not damaged, the TNI leadership orders its subordinate ranks to take firm action against any perpetrator of a crime proven to have committed a narcotics crime, especially those committed against the TNI Extended Family, who can be subject to additional criminal penalties in the form of dishonorable discharge (PDTH) from military service.

2. Research Method

The type of legal research used is normative juridical. Normative juridical research is research that places norms as the object of research, whether legal norms in legislation or legal norms derived from a law. It is also called doctrinal legal research, which uses secondary data. Normative legal research is known as qualitative legal research.

This research is descriptive and analytical, that is, research that describes, examines, explains, and analyzes laws and regulations related to the research objectives. The purpose of descriptive research is to accurately describe the characteristics of individuals, circumstances, phenomena, or specific groups, or to determine the frequency or distribution of a phenomenon or the frequency of certain relationships between the phenomenon and other phenomena in society. The primary purpose of analyzing legal materials is to understand the conceptual meaning of the terms used in the laws and regulations, as well as to understand their application in practice.

The data source in this research is secondary data. Secondary data is data that supports and bolsters primary data. Secondary data includes official documents, books, research findings in the form of reports, diaries, and so on, all related to this research.

Data collection focused on the underlying problem, ensuring that the research did not deviate or obscure the discussion. Data collection in this study utilized both primary and secondary data.

The data collection technique employed library research, which focused on secondary data. This research involved collecting data through a review of literature or secondary data, as described above. This library research sought concepts, theories, opinions, or findings closely related to the underlying problem.

3. Research Results And Discussion



The difference between psychotropic drugs and narcotics is that psychotropic drugs are substances or drugs, either natural or synthetic, not narcotics, that exert psychoactive effects through selective effects on the central nervous system, causing characteristic changes in mental activity and behavior. Narcotics, on the other hand, are drugs or substances, whether natural, synthetic, or semi-synthetic, that can cause loss of consciousness, loss or reduction of sensation or pain, and changes in consciousness that lead to continued dependence on the substance.

Indonesia is no longer just a transit country for narcotics; it has become a consumer and producer nation, even exporting marijuana, ecstasy, and other narcotics, as evidenced by shipments via packages and couriers from Indonesia to other countries, as well as packages and couriers from abroad addressed directly to Indonesia. As one of the most densely populated countries in the world, Indonesia is certainly a potential market for narcotics. Numerous drug trafficking networks have been discovered within countries, including Indonesia, which, upon investigation, have been found to have international connections.

Illegal drug use worldwide, including in Indonesia, has shown a sharp increase, affecting all nations and people of all religions, making it truly alarming. In Indonesia, drug abuse has now spread to all corners of the country, across all socioeconomic levels, entertainment venues, workplaces, hotels, and elsewhere.

The negative impacts or consequences of drug abuse according to Subagyo Partodiharjo include physical impacts, mental and moral impacts, and impacts on families, communities, and nations. The physical impact, drug use that has reached a periodic stage will experience withdrawal (unbearable pain) if it is too late to consume narcotics, drug users can also experience damage to vital organs of the body as a direct result of the presence of narcotics in the blood, such as: damage to the lungs, kidneys, liver, brain, heart, and intestines. While secondary diseases caused by drug use can be infected with infectious diseases such as hepatitis B / C, HIV / AIDS, and syphilis (a type of sexually transmitted disease caused by the bacterium *spirochaeta pallid*).

Overdose can result in death. The mental and moral impacts of drug use include physical damage to brain cells, nerves, and all body tissues, along with other vital organs. This can lead to stress, leading to changes in personality, attitudes, and behavior, such as paranoia or constant suspicion and hostility, psychosis or aggression, and even apathy toward others (antisocial behavior). Furthermore, addiction has led to many drug abusers whose mental and moral well-being has deteriorated, leading to fraud, criminality, and murder simply to obtain money to purchase drugs.

The impacts on families, communities, and the nation include psychological problems, economic/financial issues, and violence and crime. Psychological problems can arise in families with drug abusers, including disruption of domestic harmony due to feelings of shame in the eyes of neighbors and the community. Economic/financial problems also affect families and communities with drug abusers.

Some narcotics are used legally, while others are used illegally. Abuse of narcotics and psychotropics is essentially related to violations of statutory provisions. Abuse of narcotics and psychotropics refers to the use and consumption of narcotics and psychotropics without the knowledge or supervision of a doctor. Continued use can lead to drug and psychotropic addiction.

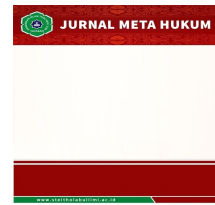
Indonesia is now not only a transit area but also a marketing area. This is deeply concerning because the number of drug abuse victims in Indonesia has recently increased, encompassing not only the wealthy but also the less fortunate in both urban and rural areas. Current drug cases are particularly shocking because the victims are predominantly young, still highly productive members of the population, posing a threat to the nation's future generations.

It can be said that Indonesia is currently experiencing a very serious drug abuse problem, threatening the younger generation. Adolescents are a vulnerable group to drug abuse because, in addition to being dynamic, energetic, and always eager to experiment, they are also easily tempted and easily discouraged, leading to drug abuse.

The problem of drug abuse is a very complex one, having become a social disease that is difficult to eradicate. This is because the drug problem is not solely a legal issue (unlawful acts) that are the responsibility of the police and government alone, but also the responsibility of all elements of society. The development, illicit trafficking, and abuse of narcotics have entered a very dangerous phase and constitute a strategic threat to the survival of the nation and state. With the participation of the community as a whole, the task of law enforcement officers becomes easier and somewhat lighter, allowing for a successful commitment to the war on narcotics.

The process for resolving cases involving TNI soldiers who commit narcotics crimes is essentially the same as for other crimes, with the only difference being the priority given to handling narcotics crimes over other crimes. The stages begin with investigation, inquiry, prosecution, and finally, verdict and execution.

If a TNI soldier is proven to have committed a narcotics crime, the TNI Commander can order subordinate commands to immediately process the soldier, transfer him to a military court, and try him. This refers to TNI Commander Decree No. Kep/22/VIII/2005, dated August 10, 2005, concerning the



Disciplinary Regulations for TNI Soldiers, which applies specifically to military personnel. The penalty for narcotics crimes is administrative sanctions, including dishonorable discharge (PTDH). Additional penalties include dismissal from military service. These strict sanctions are imposed to deter soldiers who have committed drug crimes and prevent them from repeating their crimes. They also serve as a lesson for other soldiers to avoid committing drug offenses or crimes.

The application of criminal sanctions for drug abuse in several countries is very strict because drug abuse is considered an extraordinary crime. In the United States, if a soldier is found to be using drugs, the soldier is immediately processed administratively for dismissal without going through a trial. Drug abuse by soldiers significantly impacts the primary duties of the Indonesian National Armed Forces (TNI) and can be highly detrimental to the TNI unit and organization. Based on the above description, the application of additional sanctions in the form of dismissal for TNI soldiers who abuse drugs is highly relevant within the TNI environment to achieve a drug-free organization.

The circulation of narcotics has become a matter of grave concern, as it has spread everywhere, affecting both the upper and lower classes. Children, young and old, even those of all professions, have entered the drug trafficking cycle. This is deeply disturbing to society, as it poses a very dangerous threat not only to the community but also to the nation, posing a serious threat to the nation, with the potential to undermine the national order and to destroy the nation's future generations.

The reality, whether perceived or not, is clear that many problems arise from the circulation of narcotics, which violates the rules and procedures established by the government, both through laws and regulations. The circulation of narcotics is generally influenced by advances in science and technology, as well as by the development of communications, which influence human culture.

The crime of drug trafficking, which frequently occurs in society, can lead to low morale, caused by economic pressures that trigger reactions, or also by the mental habits of individuals with mental disorders. Often, crimes, particularly drug trafficking crimes, are made possible by opportunity and premeditation. Efforts to combat the increasing trend of drug trafficking crimes, in addition to taking firm action against perpetrators by law enforcement officials, also require the active participation of religious leaders, community leaders, traditional figures, and education experts.

The policies to be implemented will encompass law enforcement activities primarily aimed at improving order and legal certainty in society. To this end, improvements to the coordination system and the harmonization of the duties of law enforcement agencies will be strengthened. This will be achieved, among





other things, by streamlining the functions, duties, powers, and authorities of law enforcement institutions according to their respective professional areas and based on a sound cooperative system.

According to Wayne Lafavre, as cited in Soerjono Soekanto, law enforcement as a process is essentially the application of discretion, involving decision-making that is not strictly regulated by legal principles but rather contains elements of personal judgment. Therefore, discretion essentially lies between law and morality (ethics in the narrow sense).

The initial motive for TNI soldiers to abuse narcotics is simply to experiment, but this experimentation can lead to addiction, which ultimately leads to disaster for themselves and their environment. Furthermore, another motive for TNI soldiers to abuse narcotics is the desire to make money quickly. We know that the price and profits from the narcotics business are very tempting, namely obtaining large sums of money in a relatively short time.

This criminal act of narcotics abuse poses a threat to the TNI institution because it will have a very negative impact not only on the daily lives of the general public but also significantly impacts the implementation of the TNI's primary duties. Drug abuse cases within the Indonesian National Armed Forces (TNI) range from users to dealers to drug dealers, even within TNI official housing complexes. The perpetrators range from enlisted (Ta), non-commissioned officers (Ba), first-rank officers (Pama), and even middle-ranking officers (Pamen).

Drug abuse is highly inappropriate for TNI soldiers, who should be role models in law enforcement and support government programs to eradicate drug abuse. The TNI considers the drug issue a serious matter. The TNI is impartial in enforcing the law. As a nation of law, the law applies to all TNI soldiers, from the rank of Private to General, especially those who abuse drugs.

TNI leadership has emphasized the importance of TNI soldiers' readiness to support drug prevention and eradication efforts. Regarding the affirmation of the TNI leadership, additional punishment in the form of dismissal is applied to TNI soldiers involved in narcotics, which in Military Administrative Law is called Dishonorable Discharge (PDTH) or dismissal from military service, in accordance with Article 62 paragraph (1) of the Republic of Indonesia Law number 34 of 2004 concerning the Indonesian National Army "Soldiers are dishonorably discharged because they have a character and/or actions that are clearly detrimental to military discipline or the TNI." This was reaffirmed by the TNI leadership by issuing a Telegram Letter (STR) from the TNI Commander Number STR/153/2013 dated May 4, 2013, which in essence "To take firm action against any TNI soldier and TNI civil servant found guilty of narcotics abuse, namely additional criminal penalties in the form of dismissal from military service.





4. Conclusion

Criminal law regulations regarding narcotics abuse are regulated in Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Narcotics abuse by TNI members in the decision of the Medan Military Court I-02 Number 109-K/PM.I-02/AL/XI/2022 is regulated in Article 112 Paragraph (1) in conjunction with Paragraph (2) and Article 127 Paragraph (1) letter a of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

Law enforcement against TNI soldiers who commit narcotics crimes in court decisions Military Decree I-02 Medan Number 109-K/PM.I-02/AL/XI/2022 is essentially a deterrent measure intended to educate TNI members to obey and comply with regulations and avoid all prohibited acts, as such accountability will always be with TNI members. TNI members who commit narcotics abuse are subject to a principal penalty of 6 (six) years' imprisonment and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) and additional penalties of dismissal from military service, including the Indonesian Navy.

The legal considerations in imposing the criminal sanction of dismissal on TNI soldiers who commit narcotics crimes are that the defendant's actions reflect a bad character and disregard for applicable legal regulations, with a disregard for the interests and reputation of his unit, even though the defendant already knows about it, and the defendant's actions disturb and harm the community and are contrary to the government's program to combat illicit narcotics trafficking.

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