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**The Principles of Military Necessity on Dismissal Punishment
towards Soldiers on Drug Abuse****Syamsael Hoeda, M. Arief Amrullah & Y.A. Triana Ohoiwutun**

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Abstract

The background of this research is the principle of military importance in the sentence of dismissal from the service of Indonesian National Army Soldiers as narcotics abusers. This study aims to analyze and find military significance in terms of removal from the facility of TNI soldiers as narcotics abusers based on Military Law and other aspects of military life. Research that uses normative legal research methods with the legislation approach, conceptual approach, and case approach gives the result that the sentence of dismissal of soldiers as narcotics abusers has fulfilled the principle of military interests. And other illegal drugs are included in the Criminal Code because the consequences of this crime are not only a military threat but also damage the discipline of soldiers in carrying out their duties.

Keywords: *Military Necessity, Criminal Dismissal, Soldiers as Narcotics Abusers.*

Introduction

The Military Criminal Law Code (abbreviated as KUHPM or Wetboek van Militair Strafrecht Stbl.1934 No. 167 jo Law Number 39 of 1947 concerning Adjusting the Criminal Law of the Army) regulates the dismissal from military service. The dismissal from military service is a punishment from military¹ is a Additional and purely military (van zuiver militaire aard).² This sentence is imposed by military judges on soldiers based on crimes committed by the defendant/convict based on "value" as inappropriate to maintain in the life of the soldier. This law is more preventive (preventive), also extraordinary so often the nature of the sentence is lost, and the character its prevention is prominent.

In several criminal cases that were tried in military court, the narcotics abuse case was one of the evidence that received serious attention by the leadership of the Indonesian National Army (abbreviated as TNI³), and

¹ See Article 6 and Article 26 of the Military Criminal Code.

² SR Sianturi. 2010. Hukum Pidana Militer di Indonesia. Badan Pembinaan Hukum Tentara Nasional Indonesia, p.71.

³ Article 1 of Law Number 3 of 2002 concerning National Defense stipulates that the TNI is the main component prepared to carry out defense tasks.

the military judge had sentenced the dismissal of the service against TNI soldiers who find to be legally guilty of abusing narcotics. Consideration of the sentence because the soldier as a narcotics abuser is deemed unable to carry out basic tasks.⁴

Based on medical studies, a person who consumes narcotics tends to repeat his actions and is likely to experience addiction. The dangers of narcotics abuse that can eventually cause health problems and the quality of life of the wearer in the long term,⁵ physical weakness, mental and moral, and ultimately damage the discipline of soldiers, which is an absolute requirement in life and implementation of the duties of soldiers. The decline in health and quality of life, along with the decrease in discipline and performance results in detriment of the interests of the unit in the performance of duties.⁶

In connection with the above, as the leaders of the TNI, the TNI Commander has instructed all his soldiers not to abuse narcotics with the threat of being cracked down through the legal process up to the level of dismissal from the service. The TNI Commander has an interest because he has the duty and obligation to carry out national defense policy, carry out the training of TNI forces, and maintain the operational readiness of the troops in his command.⁷ Related to this, unit development is a priority to be carried out continuously to prepare personnel who are always ready to carry out their tasks at all times.⁸ This is following the doctrine in the military, which is commonly known as "military preparedness becomes to military readiness," where operational standby is the main power (that 's playing power).

In connection with the above, in carrying out the tasks of national defense, professional soldiers⁹ who have expertise,¹⁰ responsibility, love of work, love of unity and discipline are high, loyalty to the Unitary State of the Republic of Indonesia and upholding the Sapta Marga and Oath Soldier This is following the policy of the development of the TNI posture prepared as a national defense posture to overcome any military threats and armed threats. In reality, the implementation of the main tasks, there are still various violations committed by soldiers. The type of a breach that is a serious concern of the leadership is the misuse of narcotics. This crime considers as a threat that disturbs national security stability and threatens national security. Narcotics have touched and penetrated all levels of society, even apparatus, officers, and individual TNI soldiers who are the main components in the national defense system. In this regard, to prevent criminal acts of misuse of narcotics in the army environment, the imposition of penalties, namely dismissal from the service in addition to the primary punishment as an effort to prevent and reduce the number of abuse in the environment of soldiers. Some argue that this crime is categorized as an extraordinary crime so that extraordinary punishment becomes

⁴ The main tasks of the TNI as regulated in Article 7 of Law Number 34 of 2004 concerning the Indonesian National Army are to uphold national sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, and protect all nations. The whole of Indonesia spilled from threats and disruption to the integrity of the nation and state territory.

⁵ <https://www.alodokter.com/narkoba-bukan-solusi>, as reviewed by dr. Allert Benedicto Ieuan Noya from Mayo Clinic (2017). Drug Addiction (Substance Use Disorder). Kids Health, from The Nemours Foundation. For teens. Drugs: What to Know. Gowin, J. Psychology Today. Long Term Effect of Marijuana on the Brain. Bernstein, S. Web MD (2014). Going to Rehab.

⁶ Law Number 25 of 2014 concerning Military Disciplinary Law has stipulated that in carrying out duties and functions, soldiers of the Indonesian National Army require high discipline, which is an absolute requirement in military life order to be able to carry out their duties and obligations properly so that military discipline law needs to be fostered and developed for the benefit of the administration of national defense.

⁷ Article 15 of Law Number 34 of 2004 concerning the Indonesian National Armed Forces.

⁸ In the Decree of the Chief of Staff Kasad Skep / 542 / XII / 2006 dated 29 December 2006 concerning the Persuasion of Guidance and Coordination of the Indonesian Army, it was emphasized that the nature of unit development was carried out in preparing and enhancing the unit's ability to carry out its main tasks and aiming at realizing a group that was ready to operate in carrying out its main tasks. Efficiently and effectively.

⁹ In the Doctrine of the Indonesian Army Kartika Eka Paksi it is emphasized that the Army personnel are fighters and guardians of independence who uphold the struggle without end, believing that the independence and success of the nation and state's struggle now and the future is a gift of God YME obtained through devotion based on the intentions and intentions sublime wishes. In carrying out the duties of the TNI as a defense force for the land dimension always upholding high ideals, namely the nobility of the homeland and the nation and the true soldierhood with the ability, willingness, and determination of every Indonesian soldier to defend the nation to the last drop of blood.

¹⁰ In Article 2 of Law Number 34 of 2004 concerning the Indonesian National Army.

relevant to accompany the exceptional characteristics of crime model that is now increasingly spread throughout the country as a transnational crime.¹¹ The TNI is aware that the dangers of narcotics abuse committed by its soldiers may have the effect of disrupting the successful implementation of the tasks and operational readiness of the unit or potentially detrimental to military interests.

Currently, narcotics are the biggest enemy for the survival of the nation and state.¹² The interpretation is a crime that has a significant and multi-dimensional impact on social, cultural, economic, and political and so devastating the impact. Military perspective, narcotics crime is considered as a proxy war¹³ and a real threat to the country's sovereignty so that the Indonesian National Army must play an active role in overcoming it. This crime is a problem for all countries, so the majority of UN members agreed to the United Convention Against the Delict Traffic in Narcotic Drugs and Psychotropic Substances (1988 United Nations Convention on the Eradication of the Illicit Circulation of Narcotics and Psychotropics) in 1988.

In connection with the explanation above, the threat of dismissal punishment from the service against soldiers as narcotics abusers intends to protect the discipline of soldiers so that the interests of carrying out their duties can carry out as well as possible. In this regard, the central theme of this study is "has the criminal dismissal from the service of TNI soldiers as narcotics abusers fulfill the principles of military interest?"

Materials and Methods

The research method used in writing scientific papers uses normative legal research by explaining and describing in detail related to military interests in the dismissal of soldiers as narcotics abusers. Normative legal research also referred to as literature research, which focuses on the analysis of primary and secondary ingredients.¹⁴ Soejono and Abdurrahman refer to normative legal research as doctrinal research, namely: research whose object of study consists of legal documents and library materials.¹⁵ This research is also systematic about the rule of law governing certain areas of law, analyzing the relationship between one rule of law and another, explaining the parts that are difficult to understand from a particular provision of law, maybe even including the prediction of the development of a specific rule of law in the future.¹⁶ Related to the writing of this article, the rule of law that uses is the rule which contains regulations regarding additional criminal dismissals from military service so that military interests can be analyzed and found in the dismissal of soldiers as narcotics abusers.

In its implementation, there is an approach that uses, namely, the legislation approach, conceptual approach, and case approach. The approach to legislation is carried out by examining all laws and regulations relating to the legal issues that present.¹⁷ The results of the study conducted then become an argument to solve the legal problems at hand. In this regard, in the writing of this scientific paper, the legislative approach is used to examine the laws and regulations relating to the lives of warriors namely the Sapta Marga and Oath of Warriors as guidelines or joints of the lives of soldiers while for the positive legal foundation of Indonesia in

¹¹ A. Kadamanta.Kejahatan narkotika: Kejahatan luar biasa dan hukuman luar biasa dalam jurnal ilmiah Fernandes Edy Syahputra Silaban Kebijakan Hukum Pidana Terhadap Pengaturan Tindak Pidana Narkotika Indonesia, Fakultas Hukum Universitas Sumatera Utara, 2012.

¹² Amanat Mulyono, Army Chief of Staff at the ceremony on August 17, 2016, in commemoration of the 71st Anniversary of the Republic of Indonesia's Independence in 2016.

¹³ Proxy War is an extension of a country that seeks to get its strategic interests but avoids the direct involvement of an expensive and bloody war. In proxy wars, it cannot be identified who is friend and foe because the enemy controls non-state actors remotely. Enemy countries will finance all the needs needed by non-state actors in return for wanting to do everything the funders want to divide the power of the target country.

¹⁴ Dyah Ochtorina Susanti and A'an Efendi.Penelitian Hukum (Legal Research).(Jakarta: Sinar Grafika, 2014), hal. 52. Primary legal materials are binding legal materials, for example, laws and regulations. Related to secondary legal documents include law books, legal dictionaries, journals, dissertations, and so forth.

¹⁵ Soejono dan Abdurrahman.Metode Penelitian Hukum. (Jakarta: Rineka Cipta, 2003), p. 56.

¹⁶ Dyah Ochtorina Susanti and A'an Efendi.Op.Cit., P. 11.

¹⁷ Peter Mahmud Marzuki. Legal Research. (Jakarta: Prenada Media, 2005), p. 93.

the form of the Military Criminal Law Act (KUHPM), the Criminal Law Act (KUHP) and Law Number 35 of 2009 concerning Narcotics. A conceptual approach is an approach that is carried out by referring to legal principles that can be found in the view of legal scholars or judicial doctrines.¹⁸ In this article, a conceptual approach also needs to describe the law in Indonesia in accommodating military interests in the dismissal punishment of soldiers as narcotics abusers.

The Discussion

The phenomenon of narcotics abuse in Indonesia is still an unresolved problem because its circulation is so massive, and it touches almost all levels of society. Based on data from the National Narcotics Agency,¹⁹ the number of users is around 3,376,115 (in 2017) for the age range of 10-59 years and teenage users around 24-28%. Evidence recorded from 2017 - 2018 was 48.23 tons of methamphetamine, 41.27 tons of marijuana, 1,594,083 pills of ecstasy, and 2,314.29 kg of powder ecstasy and the prevalence of narcotics abuse around 1.77%.

Such conditions indicate that Indonesia is in a narcotics emergency. President Jokowi has stated that "the Indonesian state is in a narcotics emergency position" when opening deliberations on national development planning (abbreviated Musrenbangnas) RPJMN²⁰ 2015-2019 in the presence of governors, regents and mayors throughout Indonesia in Jakarta. The president instructed all ministers and heads of institutions to intervene. This state is in Presidential Instruction No. 6 of 2018 concerning the National Action Plan for the Prevention and Circulation of Dark Narcotics and Narcotics Precursors (P4GN) in 2018-2019.

Breaking the chain of narcotics distribution is not easy because narcotics distribution is believed to be a business area with huge profits, so it happens almost every time and place. Another problem is the state of Indonesia's geography in the form of a long coastline is the entrance to the illegal distribution of narcotics and cannot be monitored totally.

Narcotics misuse has actually been long entered and well known in Indonesia; this can be shown from the issuance of Presidential Instruction of the Republic of Indonesia (Inpres) Number 6 of 1971 to the Head of the National Intelligence Coordinating Board (BAKIN) to tackle six prominent national problems, one of which is overcoming abuse of narcotics. Gradually the abuse of drugs became a severe problem, so the Government passed Law Number 22 of 1997 as amended to Law Number 35 of 2009 concerning Narcotics.

The Indonesian National Armed Forces, as an institution that implements government policies in the field of national defense, responded to the government's program with a commitment to creating a clean working environment for narcotics. The TNI Commander, as the TNI Chief, instructed the Chief of Staff of the Forces, Pangkotamaops, and high-rank officers within the TNI to counter-narcotics distribution in the TNI environment. The TNI Commander instructed them to carry out severe clean-ups in their respective units. TNI soldiers who indicated to be involved in narcotics abuse were immediately encouraged to be prosecuted and if it was proven to be involved from military service because soldiers who abused narcotics were certainly unable to carry out their duties.

The Military Criminal Code (abbreviated KUHPM) does not regulate narcotics misuse. The use of legislation outside KUHPM based on the following provisions:

¹⁸ Dyah Ochtorina Susanti and A'an Efendi. *Op.Cit.*, p. 115.

¹⁹ National television news, Metro TV, Saturday 23 November 2019, 08.30.

²⁰ The 2015-2019 RPJMN is a vision, mission and agenda (Nawa Cita) for President Joko Widodo and Vice President Muhammad Jusuf Kalla, using the Technocratic Draft prepared by Bappenas and guided by the National Long-Term Development Plan 2005-2025 as stipulated in Presidential Regulation Number 2 of 2015.

1. Article 1 of the Criminal Code which states that for the application of this law, the provisions of general criminal law apply, including the ninth chapter and the first book of the Criminal Law book, unless there are irregularities that are implemented by law;
2. In Article 2 of the Criminal Code states that if an act committed by someone subject to the authority of military justice bodies not contained in the Military Criminal Code, then the provisions scattered in the general Criminal Code, which means an act or criminal act committed by the military applies not only military criminal law but also applies public criminal law;
3. Furthermore, based on Article 9 of Law Number 31 of 1997 concerning Military Courts, it is stated that the judiciary within the Military Courts has the authority to prosecute criminal offenses committed by someone who at the time of the criminal act was a soldier.

In connection with this basis, TNI Soldiers are also subject to laws outside the Criminal Code, including Law Number 35 of 2009 Regarding Narcotics. Still, the criminal in this law only stipulates imprisonment and fines, including the criminal punishment system for narcotics abusers applying sanctions and sanctions at the same time, while the punishment for dismissal from military obligations is not determined using the necessary legal provisions contained in the KUHPM itself.

The penalty for dismissal from military obligations only regulated in Article 6 of the Indonesian Criminal Code, which is an additional type of punishment. Furthermore, Article 26 states that the dismissal of military obligations with or without revocation of the right to enter the Armed Forces. The sentence can be handed down by the judge in conjunction with the conviction for basic crimes to a military who based on the crime he considers to be no longer appropriate in the military —) and also weight.

In Government Regulation No. 39 of 2010 concerning the Administration of the Armed Forces of the National Army in Article 53, it stipulated that Soldiers are discharged disrespectfully from the Office of the Army because additional sentences dismissed from military obligations based on court decisions that have obtained permanent legal force, or have a character and/or act that obviously can harm the discipline of soldiering or TNI.²¹

The threat of dismissal from the military service above is very logical because the TNI Commander as Chief has a strategic position where his duties²² and obligations are to carry out national defense policies, organize military strength, and maintain operational readiness. The TNI Commander has the authority to control soldiers under his command so that they behave in a disciplined manner in carrying out their official duties and guard against actions that harm themselves and unity. Military interests are the primary consideration because TNI's tasks must be guaranteed to be carried out properly, including ensuring the integrity of the troops.

The Indonesian National Army is aware that the distribution and abuse of narcotics among the people, including TNI soldiers, is part of the modern warfare used by the enemy to attack a country. Modern warfare now no longer uses armed power (hard power) as imagined by society so far, but is more inclined to proxy wars that use third parties as war actors. Narcotics crime has implications for efforts to weaken the country's

²¹ Nature and/or actions that can be detrimental to military discipline or the TNI consist of a. adhere to ideologies, views, or teachings that are contrary to Pancasila; b. Take actions that endanger the security and safety of the nation and state; c. Sentenced more than 2 (two) times based on a court decision that has obtained permanent legal force, but is not accompanied by an additional sentence in the form of dismissal with no respect and according to the consideration of the authorized official, concerned is not appropriate to be maintained to remain in the Office of the Army; d. Committing suicide or suicide to avoid investigations, lawsuits or to avoid assignments assigned to them; e. dies in committing a crime or as a result of a crime which can likened to or the same as letter b; f. conduct absence without permission (desertion) in the unit for longer than 3 (three) months and is no longer found; g. Sentenced to discipline more than 3 (three) times at the same rank and according to the consideration of the competent official, the person concerned is not worth keeping to remain in the Office of the Army; or h. Other actions that are not appropriate to be carried out by a soldier and contrary to official orders or official regulations or activities that are not following the norms of life of the soldier which, according to the consideration of the competent official, cannot be maintained to remain in the Military Service.

²² Article 15 of Law Number 34 Year 2004 concerning the Indonesian National Armed Forces.

defense and threaten the safety of the nation. The threat of narcotics is indeed extraordinary because it believes to be able to bring up the lost generation phenomenon later if it is not immediately addressed. In the military view, the dangers of narcotics are then studied and explored by individual countries to paralyze the strength of their enemies without even having to use a sophisticated weapons system.

Modern war or proxy war not only attacks the economic system systemically but also the ideology of the nation, politics, social, culture, defense, and security, which aims to destroy a country, by first destroying its generation through narcotics circulation. The vigorous current flow of narcotics in Indonesia is part of the opium war and proxy war to cripple the strength of a nation by attacking the younger generation first.

Narcotics abusers are people who use narcotics without rights and are against the law.²³ Or can be interpreted to use drugs outside of medical functions and without supervision so that the consequences are more destructive or damaging and endanger the health of the wearer. Some of the effects and dangers of narcotics abuse are:²⁴

1. Euphoria is stimulation of excitement that is not following the reality and condition of the user's body (usually this effect is still in the use of narcotics in a dose that is not so much);
2. Delirium is a condition in which narcotics users experience decreased awareness and anxiety that can cause interference with the movement of the user's limbs (usually using more doses than euphoria);
3. Hallucinations are a situation where the narcotics user experiences delusion, for example, seeing hearing that does not exist in reality;
4. Weakness is a weakness that experiences physically or psychologically or both;
5. Drowsiness is a degenerate consciousness like a drunk, confused memory, sleepy;
6. Coma is the condition of the narcotics user to the point of decline, which can eventually lead to death.

Table 1: Narcotics Abuse Criminal Case

No	Name and the reason for drug abuse	Threatened Article and verdict	The consideration of military judges in imposing additional criminal dismissals
1	Reza Destya Parahita Abdillah Rank: Pratu, NRP. 31120150231292 Affected by the association and want to get a moment's pleasure	Article 127 paragraph 1 (a) of Law Number 35 Year 2009 concerning Narcotics Decision ²⁵ - The first degree is decided, the basic criminal sentence is 10 months imprisonment and additional crimes are dismissed from military service - The appeal rate, the principal crime is changed to 1 year imprisonment and additional crimes dismissed from military obligations - Cassation level, rejecting the defendant's appeal	- The defendant did not heed the leadership's instructions despite threats - The defendant's actions are contrary to propriety and eligibility as a soldier - The actions of the defendant resulted in mental and psychological damage as well as fighting power as a soldier - The actions of the accused can adversely affect and harm other soldiers, making it difficult for the unit commander to develop discipline and ultimately interfere with the implementation of the main tasks

²³ Article 1 number 15 of Law Number 35 of 2009 concerning Narcotics.

²⁴ Moh. Taufik Makarao, Suhasril, and Moh. Zakky AS.Op. Cit., P.49-50.

²⁵ The complete position case can see in the verdict of the Surabaya Military Court Number 74-K / PM.III-12 / AD / III / 2017 Juncto Number: 65-K / PMT.III / BDG / AD / VI / 2017 Juncto Supreme Court (442 K / MIL/2017).

2	<p>Dedi Purnomo Rank: Praka, NRP. 31060280400586</p> <p>Affected by alienation.</p>	<p>Article 127 paragraph 1 (a) of Law Number 35 Year 2009 concerning Narcotics Decision²⁶</p> <ul style="list-style-type: none"> - The first degree is decided, the basic criminal sentence is 1 year imprisonment and the additional criminal is dismissed from military service - Appellate rate, corroborating a first instance court decision - Cassation level, rejecting the defendant's appeal 	<ul style="list-style-type: none"> - The defendant did not heed the leadership's instructions despite threats - The defendant's actions resulted in independence and decreased physical and mental health so that he could no longer carry out the duties of the soldier. - If the defendant defended in the service, it can disturb and shake the joints of discipline and order in the life of the soldier in his unit
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From the case example above, essential considerations in imposing criminal dismissal from military service are:

1. The defendant disregarded or underestimated the leadership's instructions and the threat of strict action against soldiers who were required to misuse narcotics and violate applicable laws;
2. A person who consumes drugs tends to repeat his steps, and in the end, the dependence of drugs, soldiers in such circumstances will certainly not be able to carry out the main tasks of the TNI because the abuse of drugs results in physical, mental and moral weakness and resulting damage to discipline;
3. Firm action must take so that it does not affect the regulation of other members, especially in the defendant's unit, if the defendant still maintain in the service, it can disturb and destabilize the joints of discipline and order in the life of the soldier, especially in his unit;
4. the purpose of imposing a criminal sentence on the defendant is in addition to safeguarding the interests of the law and the public interest as well as ensuring that military affairs are not harmed while at the same time encouraging that the soldier continues to comply with applicable legal provisions under any circumstances.

Additional penalties for dismissal from military service used by the Indonesian Criminal Code are a comprehensive system of giving full freedom and trust to military judges to add these crimes based on research that the convicted person is no longer fit to serve as an army officer. This is different from general crimes, where the regulation of additional criminal offenses uses a unique system that determine the ability to impose further crimes in specific articles in Book II of the Criminal Code.

In connection with the dismissal of the military service, Sianturi in his book *Military Criminal Law in Indonesia*²⁷ states that the measure of the imposition of dismissal in addition to the basic crime is the "view" of the military judge regarding crimes committed by the defendant/convict based on "value" as inappropriate to maintain in the life of the military community. It can feel how much trust bestows; it must be a warning for military judges if you want to uphold justice. If the dismissal sentence impose, then in the "view/judgment" of the military judge, it must be included or implied by a meaning, that if the dismissal sentence is not handed

²⁶ The complete position case can be seen in the verdict of the Surabaya Military Court Number 17-K / PM.III-12 / AD / III / 2018 Juncto Number: 36-K / PMT.III / BDG / AD / VI / 2018 Juncto Supreme Court (230 K / MIL / 2018.

²⁷ Sianturi.Op. Cit. p.96.

down, then the presence of the convicted person later in the military community after he has completed his conviction will shake the joints of order in military society.²⁸

Soldiers who have consumed narcotics tend to repeat their actions and in the end, the dependence of drugs so that they certainly cannot be able to carry out the main tasks of the TNI because they experience physical, mental, and moral weakness that results in damage to discipline. This is not in line with the goal of military punishment, which must provide guarantees for improvement because the results to achieve in punishment is that after serving their sentence, the soldier can return to service in the unit well and join his forces.

The nature of a criminal offense for the military is basically more an act of education or coaching than an act of detention or retaliation, as long as the convict will be reactivated in military service after finishing serving a crime. An army person (ex-convict) who will return to action must be a good and useful military man both because of his awareness. As a result of the educational activities, he received while in the military prison house (military rehabilitation house). If this were not the case, the punishment would have no meaning in its return in the military society.²⁹

The ASS supports the above statement. Tambunan also stressed that the sentence imposed on the military must be educational so that when he has finished serving his sentence, he should become a better military officer than before. Therefore he is serving time in a military prison or military buildings.³⁰ The military was sentenced to jail and had to undergo it in public prison, not the military anymore because such crimes must accompany by additional punishment for dismissal from military service. So those who are in federal prisons are not military (except military entrusted).³¹

Additional penalties for dismissal from military service against soldiers as narcotics abusers are more prominent in their preventive nature with the aim that no more soldiers will violate them. This is following the environment and criminal sanction itself, namely as prevention of violations that damage the joints of the community. In other words, criminal provisions intend to have the effect of preventing anyone from committing acts, activities, actions, movements that are contrary to the regularities in society.³²

In the life of the TNI soldier, from the first time he appointed until his service period, a life guideline has been implanted to carry out the duties of Sapta Marga, Oath of Warriors, and 8 Obligations of the TNI as the joints of his life, which is a filter in his life. The guidelines explicitly stated always to uphold discipline, obey and obey the leadership, and uphold the attitude and honor of the soldiers. In the Oath of Warriors, the second item clearly stated: "submit to the law and uphold the discipline of soldiering."

Dismissal punishment from military service is a crime that considered severe because it results in loss of jobs and livelihoods and the good name of the soldier. The reason or ratio of the application of the law in the military must indeed be hard, severe, and distinctive. The need for the rules and legal norms that are hard, heavy, and peculiar and supported by severe criminal sanctions as a means of supervision and control of every TNI soldier to behave and act and behave according to the demands of the main task.³³

Judges in imposing criminal offenses cannot override military interests. If referring to several statutory provisions, military affairs have gained the first place other than legal interests. The enforcement of criminal

²⁸ *Ibid*, p.69.

²⁹ Sianturi. *Op. Cit.*, p. 69.

³⁰ Following Article 10, the place for serving the criminal offense for the military as long as he not fire is only carried out in buildings controlled by the army. Types of crimes that can be carried out are only temporary imprisonment or confinement, including substitute imprisonment. Separation of places to undergo criminal offenses for the military is necessary because the purpose of coaching for the military is different from civilian convicts. In prison, the military applies harsher prisons to restore the military following military discipline regulations.

³¹ A.S.S.Tambuan, 2013, *Hukum Disiplin Militer Suatu Kerangka Teori*, Pusat Studi Hukum Militer Sekolah Tinggi Hukum Militer "AHM-PTHM", Jakarta, p.57

³² Didik Endro Purwoleksono, 2014, *Hukum Pidana*, Airlangga University Press, Surabaya, p. 7.

³³ Soegiri, dkk, 1976, *30 Tahun Perkembangan Peradilan Militer di Negara Republik Indonesia*, Indra Djaja, Jakarta, p. 6

law in the military sphere, in addition to using general criminal law principles, is also based on applicable principles in military life. In the military life system doctrine, the existence of the commander has a central position and is fully responsible for the unity and his men. A commander must ensure the upholding of the law, discipline, and order in his unit and the maintenance of the morale of the unit, which must always be ready to be used or deployed in the implementation task. That is why the existence of the commander becomes very important and determines the success of the implementation of the job. The role of the commander can function effectively in military life; the military doctrine adheres to the principle of unity of command.

Another principle is military necessity, wherein carrying out national defense and security, military benefits take precedence over the affairs of groups and individuals, but individually, in the judicial process, the military necessity are always balanced with the attention of the law. This means that in the judicial process, law enforcers must be act so that military affairs can effectively in harmony with the legal interests.

In the provisions of the law, there is indeed no one article that defines the meaning of military necessity. Still, military necessity are military needs that are known by the military itself. Military necessity are related to military needs in carrying out tasks so that they can be carried out following military objectives. to be achieved. Some statutory provisions have governed military interests as follows:

- a. Law No. 31 of 1997 concerning Military Justice, in his explanation, stated that to carry out national defense and security, military interests take precedence over the affairs of groups and individuals. However, specifically in the judicial process, military benefits are balanced with legal purpose;
- b. Article 2 of the Criminal Code, together with Article 4 of the Criminal Code, has adopted the principle of personality, regarding the enactment of criminal provisions, which means that anywhere, anytime a military person always carries a criminal law (dat de militair zijn strafwet overall met zich medeneemt).³⁴
- c. Article 15 to Article 20 of the Criminal Code concerning the holding of deviations from the general provisions in Article 14 of the Criminal Code also affirmed that these irregularities are in the context of protecting military interests.
- d. Furthermore, in Article 8 letter b of Law Number 25 of 2014 concerning Military Discipline Law concerning the types of violations of martial discipline law that are so mild, it is determined that one of the criteria is a criminal offense that does not result in disruption of military interests. Such minor criminal offenses are sufficiently disciplined by the punishment which is more coaching to enforce the life order for every military in carrying out their duties and obligations which are an absolute requirement in military life arrangements to be able to carry out their duties and responsibilities properly in carrying out their duties and TNI function.

In connection with the above, Sianturi also stated that military interests require that every soldier carry out military discipline as thoroughly as possible. Even so, that military discipline uses as the second instinct (tweede natuur) for every soldier. Violation of military discipline must not be allowed; in fact, immediate action or punishment must take so that the soldier realizes his mistake.³⁵ If it observes that the enforcement of criminal law against soldiers is indeed closely related to the discipline of the soldiers themselves, it can be said that criminal law will work when the control of soldiers decreases and there are many violations but conversely if the discipline of soldiers is well maintained then criminal law does not function. Thus the criminal law is enforced to uphold the discipline of the soldier so that it is maintained properly so that it can carry out its duties to the maximum.

Discipline is essential for soldiers, both in life and in carrying out their duties. As the history of war has proven that victory in war can only achieve from the discipline of his soldiers. Germany, in the 1753 political

³⁴ Sianturi. *Op. Cit.*, p. 59.

³⁵ Sianturi. *Op. Cit.*, p. 87.

testament of Frederik the Great of Prussia, also mentioned military discipline: *Cette discipline faite l'ame des armees. Tant qu'elle est en vigueur, elle sou tient les empires (discipline is the soul of the army, as long as it is durable and sturdy, discipline is the pillar of state enforcement).*³⁶ Discipline always requires awareness of obedience to each leader, away from any behavior that is not following military dignity, in general, is the fulfillment of duties continuously. In short, compliance is the soul of military³⁷. This then becomes a differentiator and becomes a character in the lives of warriors.

The main thing in the life of a soldier is discipline, without military discipline like an armed group. Discipline is the basis for the daily lives of soldiers so that the slightest violation is highly despicable. A high level of discipline can reduce the occurrence of offenses. High discipline from members of its members will guarantee the upholding of the sovereignty of the Republic of Indonesia. The successful implementation of the task is an excellent honor for his unit, himself, and his family.³⁸ Many philosophers have put the concept of duty at the heart of ethics. As William Patterson quoted Immanuel Kant's opinion that only actions based on a sense of responsibility have moral rewards, namely:

*“ to be beneficent when we can is a duty, and besides this, there are many minds so sympathetically constituted that, without any other motive of vanity or self interest, they find a pleasure in spreading joy around them and can take delight in the satisfaction of other so far as it is their own work. But I maintain that in such a case an action of this kind, however proper, however amenable it may be has nevertheless no true moral worth but is on level with other inclinations, e.g., the inclinations to honor, which, if happily directed to that which is in fact of public utility and accordant which duty and consequently honorable, deserves praise and encouragement but not esteem. For the maxim lacks the moral import, namely that such actions be done from duty, not from inclination”.*³⁹

Based on these explanations, it can interpret that in carrying out the tasks, not all can give an honorable award. Only the tasks carried out with sincerity are given an honorable award. For TNI soldiers, the implementation of duties is the primary goal of their service to the state and nation, while discipline is the principal capital to carry out the task. Dismissal punishment from disaster against soldiers as narcotics abusers is very reasonable to realize the legal interests to run in balance with military affairs. The military necessity does not want soldiers who are disciplined because it has a significant influence on the successful implementation of their duties. Medical reviews have stated that a person who has taken drugs tends to be addicted so that his level of health and quality of life reduce in the long run. in the military circles, dismissal from military service imposed to ensure the rule of law and discipline, as well as the maintenance of the morale of the unit so that at any time ready to be used or deployed to carry out military operations.

Results

Based on the description above, it can conclude that the dismissal of the service against the soldiers as narcotics abusers is carried out to protect military interests, namely maintaining and maintaining the discipline of service members as an absolute requirement in military life arrangements to be able to carry out their duties and obligations. The basis for imprisonment from service to narcotics abusers is:

1. Soldiers who have abused narcotics judge to be unable to carry out the main tasks of the TNI, that misuse of narcotics results in physical, mental and moral weakness and damage to the discipline of soldiers;

³⁶ ASS Tambunan. *Op. Cit.*, p. 68-70.

³⁷ M Badeb & HJ von Mitzlaff, *Wehrdisziplinarordnung*, Frankfurt am Main, Bernard & Graffe Verlag fur Wehrwesen, 1965, p.61.

³⁸ Susiani. *Kejahatan Militer Desersi di Indonesia (Suatu Kajian Mengenai Perumusan Norma & Sanksinya)*. Jakarta: Anda Lusia Bumi Pertiwi bekerjasama dengan Alumni PETEHAEM dan ESTEHAEM, 2014., p. 4.

³⁹ William Patterson, 2005, *To Fight or Not to Fight : The Ethics of Military Desertion*, International Journal of Applied Philosophy, Vol. 19, No.1, pp 11-25.

2. The enactment of the crime as a preventive function so as not to affect the discipline of other members and to encourage soldiers to continue to comply with the provisions of the law in force in any circumstances
3. soldiers as narcotics abusers cannot be maintained in service because they can disturb and destabilize the joints of discipline and order of life of soldiers in the unit.

Suggestion

In this study, the author suggests that criminal acts of drug abuse and other illegal drugs also regulate in the Criminal Code. This crime has an impact and has a direct effect on the health of its users and threatens to damage the discipline of soldiers. In the modern war era, the circulation and abuse of narcotics is a powerful weapon that threatens national security and national safety.

References

BOOK

- A.S.S.Tambuan. 2013. *Hukum Disiplin Militer Suatu Kerangka Teori*, Jakarta: Pusat Studi Hukum Militer Sekolah Tinggi Hukum Militer “AHM-PTHM”.
- Didik Endro Purwoleksono. 2014. *Hukum Pidana*. Surabaya : Airlangga University Press.
- Dyah Ochtorina Susanti dan A’an Efendi. 2014, *Penelitian Hukum (Legal Research)*, Jakarta: Sinar Grafika
- Moh. Taufik Makarao, Suhasril, dan Moh. Zakky AS. 2003. *Tindak Pidana Narkotika*. Jakarta: Ghalia Indonesia
- M Badeb & HJ von Mitzlaff. 1965. *Wehrdisziplinarordnung*, Frankfurt am Main, Bernard & Graffe Verlag fur Wehrwesen.
- Peter Mahmud Marzuki. 2005. *Penelitian Hukum*. Jakarta: Prenada Media.
- Soejono dan Abdurrahman.2003, *Metode Penelitian Hukum*.Jakarta: Rineka Cipta
- Soegiri, dkk. 1976. *30 Tahun Perkembangan Peradilan Militer di Negara Republik Indonesia*. Jakarta: Indra Djaja.
- SR Sianturi. 2010. *Hukum Pidana Militer di Indonesia*.Jakarta: Badan Pembinaan Hukum Tentara Nasional Indonesia,
- Susiani. 2014. *Kejahatan Militer Desersi di Indonesia (Suatu Kajian Mengenai Perumusan Norma & Sanksinya)*. Jakarta: PT Andalusia Bumi Pertiwi bekerjasama dengan Alumni PETEHAEM dan ESTEHAEM.
- William Patterson. 2005. *To Fight or Not to Fight : The Ethics of Military Desertion*, International Journal of Applied Philosophy, Vol. 19, No.1.

JOURNALS

Fernandes Edy Syahputra Silaban *Kebijakan Hukum Pidana Terhadap Pengaturan Tindak Pidana Narkotika Indonesia*, diajukan untuk melengkapi tugas-tugas dan memenuhi syarat-syarat untuk memperoleh gelar sarjana hukum pada Fakultas Hukum Universitas Sumatera Utara. 2012

LEGISLATIONS

The Book of Military Criminal Law

Law Number 25 of 2014 concerning Military Discipline Law

Law Number 34 of 2004 concerning the Indonesian National Army

Law Number 3 of 2002 concerning National Defense

Government Regulation Number 39 of 2010 concerning the Administration of Indonesian National Army Soldiers

WEBS

<https://www.alodokter.com/narkoba-bukan-solusi> as reviewed by dr. Allert Benedicto Ieuan Noya from Mayo Clinic (2017). Drug Addiction (Substance Use Disorder). Child Health, from The Nemours Foundation. For teens. Drugs: What to Know. Gowin, J. Psychology Today. Long Term Effect of Marijuana on the Brain. Bernstein, S. Web MD (2014). Going to Rehab.

DOKTRIN

Doktrin TNI AD Kartika Eka Paksi

VERDICT

Verdict Number Skep/542/XII/2006 tanggal 29 Desember 2006 about Bujuklak Pembinaan Satuan TNI AD

NEWS

Berita televisi Nasional, Metro TV, hari Sabtu tanggal 23 November 2019, pukul 08.30.