

Criminal Liability of Indonesian National Army (Tni) Members for the Crime of Abusing Class I Narcotics for Themselves (Study of Dilmiltama Decision 3-K/Pmu/Bdg/Au/lii/2019)

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Abstract. *This thesis examines the criminal liability of Indonesian National Armed Forces (TNI) members involved in the abuse of Class I narcotics for personal use, with a case study of Decision DILMILTAMA 3-K/PMU/BDG/AU/III/2019. The increasing issue of narcotics abuse, including among state officials and law enforcement personnel, highlights a critical national problem that threatens the nation's future. This research aims to analyze the application of criminal sanctions against TNI members who commit narcotics abuse and to scrutinize the legal considerations of military courts in handing down verdicts for such cases. Utilizing a normative juridical research method with an analytical descriptive approach, the study investigates primary and secondary legal materials, including laws, legal principles, and judicial decisions. The case under review, Decision DILMILTAMA 3-K/PMU/BDG/AU/III/2019, involved defendant X, who was convicted of using Class I narcotics for personal consumption. The results of this study indicate that members of the Indonesian National Armed Forces (TNI) who are proven to have abused Class I narcotics for personal use can still be held fully criminally liable, as specified in Law Number 35 of 2009 on Narcotics and relevant military regulations. In this case, the defendant, Muhammad Akhyar, was sentenced to imprisonment and was also subjected to dishonorable discharge (PTDH) as a form of both criminal and administrative accountability.*

Keywords: *Criminal Liability; Narcotics Abuse, Military Court Decision; TNI Members.*

1. Introduction

The Republic of Indonesia is a state based on law, this provision is stated in the explanation of the 1945 Constitution which explicitly states that "The State of Indonesia is based on law (recht staat) not based on mere power (machstaat). In the Preamble to the 1945 Constitution, it is mandated to the Indonesian Nation to protect all Indonesian people and all of Indonesia's territory and to advance public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice.

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Laws made by humans have the aim of creating orderly, safe and secure conditions, and criminal law, which is a law made by humans, has the function of

as explained by A. Ross as quoted by Soerjono Soekanto, law as a means of social control, namely encompassing all the forces that create and maintain social ties.¹

Law works by providing boundaries on what can and cannot be done, therefore there are sanctions for violators of these boundaries. Laws should be made to be obeyed, but in reality there are still many people who violate the rules, resulting in disturbances to public security and order. Legal activities are often carried out in everyday life. An action is called a legal act if it has consequences that can be legally accounted for or recognized by the state. The law itself is a rule that has been officially approved by the government through a legal institution or agency.

A crime can happen to anyone and can be done by anyone. A crime is an act or deed committed by a human being which is prohibited by criminal law. One of the crimes that often occurs in Indonesia is narcotics. In general, the problem of narcotics can be divided into three parts, namely the illegal production of narcotics, the illegal trade of narcotics and the abuse of narcotics.

Drug abuse and illicit trafficking are not new in Indonesia. Drug crimes are a form of violation of the law and violation of social norms that have existed for a long time. This drug problem is a threat that is so great that it hits Indonesia in the mass media almost every day there is news of drug abuse. The impact of drugs greatly affects physical, mental, and mental conditions, as a result if the condition is not immediately addressed, then a country will be closer to destruction.

Drugs and illegal drugs are extraordinary crimes that can damage the order or indirectly constitute a threat to the continuity of development and the future of the nation and state. In recent years, Indonesia has become one of the countries that has become the main market for the international narcotics distribution syndicate network for commercial purposes. For the narcotics distribution network in Asian countries, Indonesia is considered the most commercially prospective market (market-state) for international syndicates operating in developing countries. The problem of drug abuse is not only a problem that needs attention for Indonesia, but also for the international world.²

Narcotics are drugs or substances that are useful in the fields of medicine, health services and scientific development. However, on the other hand, it can cause a very detrimental dependency if used without control, strict and careful supervision. In general, what is meant by Narcotics is a type of substance that can cause certain effects for people who use it, namely by inserting it into the body.³The term narcotics is no longer a foreign term to the public, considering the many news stories from both print and electronic media that report

¹Soerjono Soekanto, 1986, Introduction to Legal Research, UI Press, Jakarta, p. 44

²Kusno Adi, 2014, Criminal Policy in Handling Drug Crimes by Children, Malang, UMM Press, p. 30

³Moh. Taufik Makarao, et al., 2003, Narcotics Crimes, Ghalia Indonesia, Jakarta, p.16.

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on the impact of narcotics use and how victims from various groups and ages have fallen due to its use. According to the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, Article 1 paragraph (1), (2), and (3) states:

1. Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency, which are divided into groups as attached to this Law.
2. Narcotics precursors are substances or chemicals that can be used in the manufacture of narcotics which are differentiated in the table as attached to this Law.
3. Production is the activity or process of preparing, processing, making and producing narcotics directly or indirectly through extraction or non-extraction from natural sources or chemical synthesis or a combination thereof, including packaging and/or changing the form of narcotics.

Currently, drug abuse is a very worrying problem because of its widespread use among students, teenagers, state officials, political elites, and even security and law enforcement officers themselves.⁴This situation is caused by several things, including the awareness of Indonesian society about the lack of obedience to religious teachings, norms and laws. This situation is exacerbated by the rapid influence of globalization which brings a very rapid flow of information and cultural transformation, including the abuse of narcotics.⁵

The legislation governing illegal drugs began to be issued in 1949 with the formation of Law Number: 419 dated December 22, 1949 concerning the "Sterkwerkendegeneesmiddelen Ordonantie" which is translated into the hard drug ordinance. Next, on April 2, 1985, the regulation of the Minister of Health of the Republic of Indonesia Number: 213 / Men / Per / IV / 1985 concerning certain hard drugs was formed. The Regulation of the Minister of Health was issued to complement the Decree of the Minister of Health of the Republic of Indonesia Number: 938 / A / SK / 1971 and the Decree of the Minister of Health of the Republic of Indonesia Number: 10381 / A / SK / 1972. The formation of Law on February 8, 1993 Regulation of the Minister of Health of the Republic of Indonesia Number: 124 / Men.kes / II / 1993 concerning certain illegal drugs Minister of the Republic of Indonesia. However, the regulation of the Minister of Health of the Republic of Indonesia has not yet included criminal sanctions. So on March 11, 1997 in Law Number 22 of 1997 concerning narcotics, then amended by Law Number 35 of 2009. Various regulations issued by the government regarding narcotics in order to prevent narcotics abuse.⁶

The increasing number of drug users in Indonesia has become a national problem that is increasingly worrying. One of the factors that is suspected of contributing to this condition is

⁴M. Arief Hakim, 2004, *The Dangers of Drugs and Alcohol: How Islam Prevents, Overcomes, and Oppose*, Nuansa, Bandung, p. 31

⁵I Gede Darmawan Ardika, I Nyoman Sujana, I Made Minggu Widyantara, *Law Enforcement Against Drug Abuse Crimes*, JOURNAL OF LEGAL CONSTRUCTION, Vol. 1, No. 2, October 2020, pp. 286-290

⁶ibid

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the inconsistency in law enforcement and weak criminal policies. This can be seen from the implementation of regulations that have not been fully effective in suppressing the distribution and abuse of narcotics.

As a legal basis, Law Number 35 of 2009 concerning Narcotics—which is a revision of Law Number 5 of 1997 and Law Number 22 of 1997—has actually strictly regulated narcotics crimes, both in terms of prevention, prosecution, and rehabilitation for users. However, in practice, various challenges are still found in the implementation of the regulation, including legal loopholes that allow for abuse of authority and indecisiveness in imposing sanctions.

This situation requires serious attention from various parties, especially law enforcement officers, policy makers, and the wider community. It is necessary to strengthen the justice system, improve coordination between related institutions, and optimize rehabilitation and education programs as preventive measures. Without more serious and comprehensive efforts, the threat of drug abuse will continue to haunt the nation's generations and hinder national development.

Based on Law Number 35 of 2009 concerning Narcotics, it is clear that perpetrators of narcotics abuse are perpetrators of narcotics crimes. In addition, the law has also classified the perpetrators into two groups, namely as follows:

1. A drug addict is a person who uses or abuses narcotics in a state of dependence on narcotics, either physically or psychologically.
2. Abusers are people who use narcotics without permission or against the law (committing legal action).⁷

The author cites a case of drug abuse that occurred in the military area of the DILMILTAMA Decision Study 3-K/PMU/BDG/AU/III/2019.

Defendant Muhammad Akhyar was charged with abusing class I narcotics for personal gain. Based on evidence and examination, the defendant had purchased and used crystal methamphetamine several times since March 2018. The purchase process was carried out through an intermediary who then delivered the goods to the defendant. The defendant consumed crystal methamphetamine at the Gateway Apartment, Bandung, and used it several times with his civilian friends.

The arrest occurred on September 27, 2018 when the defendant was using crystal meth in his apartment room. Lanud Husein Sastranegara Satpom officers arrested him with evidence in the form of crystal meth residue, a smoking device (bong), a digital scale, and several other items. The defendant's urine test results also showed positive for Methamphetamine and Amphetamine.

⁷Moeljatno. 2004, Criminal Code, Article 1 of Law Number.
35 of 2009 concerning Narcotics, Pradnya Paramita, Jakarta, p. 49

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The Military Prosecutor filed an appeal because he considered the sentence handed down by the Jakarta High Military Court II to be too light, namely only 6 months in prison and dismissal from military service.

In his demands, the Oditur asked for a 10-month prison sentence and dismissal. Departing from this problem, the author is interested in researching and studying the problem in the form of a thesis entitled "Criminal Responsibility of Members of the Indonesian National Army (Tni) for the Crime of Abusing Class I Narcotics for Themselves (Study of the Decision of Dilmiltama 3-K / PMU / Bdg / AU / III / 2019)"

2. Research Methods

This research is included in the type of normative or doctrinal legal research. Doctrinal comes from the word "doctrine" which means principle, legal basis, which is obeyed.⁸ Ian Dobinson and Francis Johns explain that doctrinal legal research is research that asks about the law in a particular field or is known as pure theoretical research (*sui generis*).⁹

3. Results and Discussion

3.1. Application of Criminal Sanctions Against Members of the Indonesian National Army (TNI) Who Commit the Crime of Abusing Class I Narcotics for Themselves

The application of criminal sanctions against members of the Indonesian National Army (TNI) who abuse class I narcotics for themselves is a complex and strategic issue in the Indonesian legal system. This not only concerns the general criminal law enforcement aspect, but also touches on the realm of discipline and honor of the military institution. As is known, the TNI is a state apparatus that has an important role in maintaining national sovereignty and security. Therefore, every form of violation of the law by its members is a serious concern for both the public and the state.

Members of the Indonesian National Armed Forces (TNI) who abuse class I narcotics for themselves are in a unique legal position because they are subject to two legal regimes at once, namely general criminal law as regulated in Law Number 35 of 2009 concerning Narcotics and military law as regulated in the Military Criminal Code (KUHPM). In this context, the application of criminal sanctions against TNI members is not only intended to provide a deterrent effect, but also to maintain the discipline and honor of the military institution.

According to Article 127 paragraph (1) letter a of Law No. 35 of 2009, anyone who abuses class I narcotics for themselves can be punished with a maximum prison sentence of 4 (four) years. However, this provision is given a different nuance when the perpetrator is a member of the TNI. Based on Article 65 paragraph (2) of Law Number 34 of 2004 concerning the TNI, soldiers are subject to the military justice system in criminal cases they commit. This means that the law enforcement process against narcotics abuse by TNI members will be handled by the Military Auditorate, military courts, and based on military law regulations.

⁸Bryan A Garner, *Black's Law Dictionary* 9th Ed. (USA : Thomson West. 2009), p. 553

⁹Ian Dobinson & Francis Johns, *Qualitative Legal Research*, In *Research Methods For Law*, Edinburgh University Press, Edinburgh, p. 18-19

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In military criminal law, the act of abusing narcotics by soldiers is seen as a serious violation of military discipline. According to Article 103 paragraph (1) of the Criminal Code, any soldier who violates an official order or commits a reprehensible act can be sentenced to imprisonment or other additional punishments, such as dismissal from military service. Abuse of narcotics is also considered an act that harms the honor of soldiers because it is contrary to the principles of chivalry, responsibility, and exemplary behavior inherent in the military profession.

The imposition of criminal sanctions on TNI members who are proven to have abused narcotics generally refers to the principle of a “double track system”, namely a criminal punishment system that includes criminal and action. This is in line with the purpose of punishment according to Jeremy Bentham's utilitarian theory, which emphasizes crime prevention through deterrent effects and rehabilitation of perpetrators so that they do not repeat their actions. In cases of drug abuse, in addition to criminal sanctions in prison, military courts can also consider recommendations for medical and social rehabilitation for soldiers who show indications of drug dependence.

However, in practice, the imposition of sanctions on TNI soldiers who abuse narcotics often causes debate. On the one hand, there is an expectation that military law enforcement officers will take a firm stance to maintain the image and discipline of the military. On the other hand, a humanistic approach that considers the perpetrators as victims of substance abuse must also be considered, as regulated in Article 54 of the Narcotics Law, which emphasizes a rehabilitative approach for drug abusers.

Several military court decisions show that the application of criminal sanctions against TNI members who abuse narcotics depends on a number of factors, including: the level of dependency of the perpetrator, family background and military duties, the defendant's admission of guilt and remorse, and the impact of the act on the military unit. In the Dilmiltama Decision 3-K/PMU/BDG/AU/III/2019, for example, a defendant who tested positive for using class I narcotics was sentenced to 1 year and 6 months in prison and dismissed from military service, on the grounds that his actions had tarnished the good name of the TNI AU institution.

Law enforcement against TNI soldiers who abuse narcotics must also consider the principles of legal certainty, justice, and benefit as emphasized by Gustav Radbruch in the theory of the three pillars of law. In this context, justice is not only directed at the perpetrators, but also at the military institution and the wider community who place their trust in the integrity of soldiers as guardians of the country's sovereignty.

Thus, the application of criminal sanctions against TNI members who abuse class I narcotics for themselves must prioritize the integration of repressive and rehabilitative approaches. Firm action is still needed to maintain the authority of the military institution, but the humanitarian and rehabilitation aspects for perpetrators who are addicted to narcotics should also be considered so that substantive justice can be realized in the military justice system.

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3.2. Considerations of Military Justice Law in Handing Down Criminal Verdicts Against Members of the Indonesian National Army (TNI) in the Dilmiltama Verdict 3-K/PMU/Bdg/AU/III/2019

The Dilmiltama 3-K/PMU/Bdg/AU/III/2019 decision is one of the important decisions in affirming the military institution's stance on drug abuse among soldiers. This case concerns the defendant, an Air Force soldier who was proven to have used class I narcotics for himself, which was then processed through the military justice mechanism.

1. Chronology of the Decision

This case began when the Defendant, an active member of the Indonesian Air Force (TNI AU) with the rank of LK T with NRP -, was caught abusing crystal methamphetamine at the Gateway Apartment, Gunung Batu Pasteur, Bandung. Based on the indictment of the Jakarta High Military Prosecutor II, the Defendant had been consuming crystal methamphetamine since March 2018. He obtained the narcotics by ordering through an intermediary named Mr. M, who then took the crystal methamphetamine package by witness Ahao (Witness-2). Payment was made by transferring money to the account provided by Memet, and each crystal methamphetamine package was purchased for around Rp1,000,000.00.

On September 26, 2018, Witness-2 was arrested by the police while carrying a package of crystal methamphetamine that was planned to be given to the Defendant. Based on Witness-2's statement to investigators, he had just handed over some of the crystal methamphetamine packages to the Defendant around the Cimindi gas station. Based on this information, on September 27, 2018 at around 21.30 WIB, the Defendant was arrested by officers from the Husein Sastranegara Air Force Base Military Police (POM) in his apartment room while consuming crystal methamphetamine.

2. Legal Facts

In this case, the defendant is an active member of the Indonesian Air Force with a certain rank, who when examined tested positive for using narcotics in the form of crystal methamphetamine. Based on the results of the investigation by the Military Police and forensic laboratory, evidence was found that the defendant used crystal methamphetamine in his residential environment secretly without the permission of his commander. This crime is considered to violate Law Number 35 of 2009 concerning Narcotics and the applicable military disciplinary provisions. From the results of the search and urine test conducted at the location, it was found that the results of the Defendant's urine test showed positive (+) for containing Methamphetamine and Amphetamine. This was confirmed by two laboratory reports, namely:

DKI Jakarta Health Service Laboratory Report Number Lab. 2.2.2/008-1810010024 dated October 9, 2018, which concluded that the Defendant's urine contained Methamphetamine and Amphetamine;

Report of the National Police Criminal Investigation Unit for Forensic Laboratory Number 5046/NNF/2018 dated October 10, 2018, which stated that the evidence in the form of white crystals did indeed contain Methamphetamine.

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During the examination, the Defendant admitted that he had been consuming crystal methamphetamine regularly since March 2018, and had consumed it several times with civilian friends in the apartment. He also stated that he was aware that using narcotics without permission was against the law. However, the Defendant argued that he was stressed and felt that he did not get justice in his job promotion and promotion, which was the reason he consumed crystal methamphetamine.

The defendant is also a recidivist. He was once sentenced to 4 months in prison with a 6-month probation based on the Decision of the Jakarta High Military Court II Number 36-K/PMT-II/AU/VI/2013 in a fraud case, and was once given a disciplinary penalty by Dandepohar 10 in the form of a warning in 2008 for promising a service project to another party without permission from his superior.

3. Legal Basis for Criminal Sentences

The panel of military judges in issuing the decision is based on several legal provisions, including:

- a. The Military Criminal Code (KUHPM), particularly Article 103, allows for the application of general criminal law to military members who commit ordinary crimes.
- b. Law Number 35 of 2009 concerning Narcotics, specifically Article 127 paragraph (1) letter a, which states that those who abuse class I narcotics for their own use can be subject to a maximum prison sentence of 4 (four) years.
- c. Law Number 34 of 2004 concerning the Indonesian National Army, especially Article 39 paragraph (1) letter d, concerning dishonorable discharge (PTDH) for soldiers who commit serious criminal violations.
- d. TNI Commander Telegram Letter Number ST/1221/2018, which states that TNI members involved in narcotics must be processed by law and proposed PTDH as a form of institutional assertiveness.

The Panel of Judges at the Jakarta II High Military Auditorate assessed that the elements of the criminal act charged had been legally and convincingly fulfilled, namely the act of abusing class I narcotics for oneself as regulated in Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics.

In considering the verdict, the Panel of Judges took into account: The fact that the Defendant is an active TNI AU soldier who should be a role model. The fact that this is not the Defendant's first violation of the law. The Defendant's honesty in admitting his actions. The Defendant's personal reasons for consuming crystal methamphetamine were due to stress and feelings of not getting justice in the military institution. The verdict reflects that law enforcement in the military environment continues to be carried out firmly and objectively, even though it concerns active members with middle ranks. This is part of an effort to maintain integrity and discipline within the TNI, as well as being a reflection of the principle that every citizen, including members of the military, has equal standing before the law (equality before the law)

4. Legal analysis

The Dilmiltama 3-K/PMU/Bdg/AU/III/2019 decision provides an important precedent in law enforcement in the military environment, especially in cases of drug abuse by TNI members. From a legal perspective, this case reflects the application of the principle of equality before the law as regulated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "All citizens have equal standing before the law and government and are required to uphold the law and government without exception."

The panel of judges used the correct legal basis, namely Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics, which states that every person who abuses class I narcotics for themselves is threatened with a maximum prison sentence of 4 years. The use of this article is correct because based on legal facts, the defendant consumed crystal methamphetamine for himself and there was no indication of distribution or possession in large quantities that could be qualified as a distributor.

Furthermore, the use of Article 103 of the Criminal Code provides a normative basis for military justice to apply general criminal law to military personnel. This article allows TNI personnel to be processed through general criminal law mechanisms if they commit a crime that is not a specific military violation. Thus, the application of Article 127 of the Narcotics Law to TNI soldiers is legally valid based on the doctrine of *lex generalis derogat legi specialis* while still adhering to special norms in military law.

In addition, the judge's consideration based on Law Number 34 of 2004 concerning the Indonesian National Army, especially Article 39 paragraph (1) letter d, is the basis that military members who are proven to have committed serious crimes, including drug abuse, can be dishonorably discharged (PTDH). This is reinforced by the TNI Commander's Telegram Letter Number ST/1221/2018, which instructs that every TNI member involved in narcotics must be prosecuted and proposed to be dismissed from military service.

From the aspect of legal substance, the panel of judges firmly indicated that the Defendant's actions not only harmed military values, but also disrupted the integrity of the institution. Drug abuse by soldiers, especially carried out secretly in civilian apartment environments and without command permission, has tarnished the image of the military which upholds discipline, honor, and exemplary behavior.

In the consideration of aggravating circumstances, the defendant's status as a recidivist also plays an important role. Based on the principle of *non bis in idem*, the previous violations committed by the defendant in a criminal fraud case (decision Number 36-K/PMT-II/AU/VI/2013) and the disciplinary punishments imposed on him are indicators that the defendant has a tendency to repeat violations of the law. Within the framework of the theory of criminal responsibility, this shows that the defendant consciously and repeatedly committed unlawful acts, so that the criminal sanctions imposed must reflect justice, a deterrent effect, and protection of the legal order.

Legally, the judge's consideration that mentions psychological reasons such as stress due to injustice in the institution cannot be used as a justification or excuse in criminal law. This is

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in accordance with Moeljatno's opinion (2002) that reasons that can eliminate criminal penalties must be legally valid, not personal or emotional reasons.

This decision also reflects the application of retributive and preventive theories in criminal law. Sanctions are imposed as a form of retaliation for wrongdoing (retributive) as well as a warning and prevention for other soldiers not to commit similar acts (preventive). In the military context, this preventive effect is very crucial because drug violations have the potential to cause a domino effect on troop morality and discipline.

Thus, from the legal analysis above, it can be concluded that this decision has fulfilled the principles of fair law, balanced between legal protection, substantial justice, and the need to maintain order and discipline in the military environment. This decision is also in line with the spirit of zero tolerance towards narcotics among law enforcement officers and the armed forces.

4. Conclusion

The application of criminal sanctions against members of the Indonesian National Army (TNI) who abuse class I narcotics for themselves is an implementation of the law that prioritizes a balance between enforcing military discipline and a rehabilitative approach. TNI members who commit this violation are subject to the military justice system which combines general criminal law and military law. The sanctions imposed are not only intended to provide a deterrent effect, but also to maintain the honor and integrity of the military institution. In practice, military justice assesses a number of factors, such as the level of dependency, admission of guilt, and the impact of the action on the institution. The example of the case of the Dilmiltama Decision 3-K/PMU/BDG/AU/III/2019 shows that although the defendant received a criminal sentence and was dismissed, the decision also considered humanistic and rehabilitation aspects. The decision emphasized that every TNI member must be treated equally before the law without exception, while enforcing strict discipline in order to maintain the image and function of the TNI as the guardian of state sovereignty. Therefore, the application of criminal sanctions in cases of drug abuse by TNI members must be firm but fair, prioritizing the principles of legal certainty, justice, and benefits for the military institution and the wider community.

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