

Legal considerations of Military judges regarding drug abuse by TNI

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Abstract

Purpose: This research aims to determine the basic considerations of military judges in giving decisions on case no. 51-K/PM I-04/AD/VII/2021. Apart from that, it aims to analyze whether the judge in handing down the decision has considered substantive justice or not.

Methodology/approach: This research is a type of Normative Juridical and Empirical Juridical research. Normative Juridical research is carried out based on legal materials such as legal theory, legal principles and legislation related to research.

Results/findings: Based on the results of the research and discussion, it is clear that the basis for military judges legal considerations regarding TNI members who abuse narcotics consists of juridical and non-juridical considerations.

Limitations: The Panel of Judges has not implemented substantive justice, this is because some TNI who were dismissed from military service due to narcotics abuse did not take part in a medical rehabilitation program, so that when they returned to society, their condition had not fully recovered from narcotics dependence.

Contribution: The judge's decision should create order and legal certainty and fulfill a sense of justice towards TNI members who abuse narcotics. Military judges should consider social and medical rehabilitation of TNI members who abuse narcotics. This rehabilitation action is also in line with a number of decisions of the Supreme Court of the Republic of Indonesia which ordered the rehabilitation of TNI soldiers who abuse narcotics and considered imposing additional penalties in the form of dismissal from military service.

Keywords: *Judge's Consideration, Narcotics Abuse, TNI Soldier*

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1. Introduction

In the era of globalization and technological advances, the influence on the development of transnational crime networks has also resulted in an increase in cases of transnational crime, one of which is narcotics abuse. This crime is a big problem that is currently in the spotlight and concerns of the Indonesian people. Narcotics abuse is increasing and sometimes perpetrators are not fully aware of the legal consequences they will face. Narcotics abuse is a worrying issue and has a significant impact on the family and social environment. Every year, the number of narcotics users continues to increase (Andrisman, Tri dan Raharjo, Eko, 2023).

Based on data from the National Narcotics Agency (BNN), in 2017 there were around 3.5 million people in Indonesia who used narcotics, of which 1.4 million were regular users and one million had become addicts. Apart from having a negative impact on users' health, narcotics abuse also has economic consequences. BNN estimates that economic losses due to narcotics abuse reach IDR 74.4 trillion, and this figure only includes losses from narcotics abuse (Kartika, Septiana, Ariani, Kasmawati, Nurhasanah, 2023). If the number of narcotics users continues to increase every year, then the loss rate

will continue to increase. One of the factors that influences economic losses due to narcotics in Indonesia is the existence of an active market in the circulation of narcotics. In the directory of supreme court decisions, from 2007-2024, 3,190 data on narcotics decisions from the military criminal division were found.

However, narcotics abuse has no age or profession limits, but can be carried out by individuals from various levels of society, including students, professionals, celebrities, bureaucrats, even members of law enforcement and members of the TNI. The TNI, as the main component in the national defense system, has the duty to defend, protect and the sovereignty of the country. They are expected to be an example for society in preventing and eradicating narcotics abuse, remembering that military members in Indonesia are synonymous with compliance and discipline with applicable laws.

2. Literature Review

Military courts are part of the 4 (four) judicial circles under the Supreme Court. Thus, the military court is one of the executors of judicial power, in this case the executor of judicial power for the military community (Aurora, S.D., Tisnanta, HS., Triono, A, 2023). The military court is a special court to try TNI officers who commit crimes, both general crimes and military crimes. The military court is a special court for soldiers because it is related to the principle of unity of command and also the concept that the military court is held in the interests of national defense (Alim, M.Z., 2024). TNI soldiers are the main means of national defense, therefore the military court in handing down its decision must also consider the interests of national defense as the basis for considering its decision. The purpose of the existence of military courts is not only aimed at upholding law and order within the TNI, but also to keep the TNI strong and solid. As a special court in the military community, military courts are run by adhering to several basic principles, namely as follows:

- 1) The principle of Clear and Present Dangerous.
- 2) Principle of Equality Before the Law.
- 3) Principles of Military Personality.
- 4) Principle of Universal Jurisdiction.
- 5) The principle of non-derogable rights.
- 6) Principle of Unity of Command.

Every case involving TNI members will be decided by a judge who has knowledge and a good conscience in Military Justice. Judges are functional officials of the Court who are tasked with examining and deciding cases submitted to the Court. The duties and responsibilities of the Judge in a trial include:

- 1) Chair a trial with the assistance of the Registrar. The judge in certain cases, for example traffic cases, can act as a sole judge. However, usually in a trial the judge is accompanied by 2 (two) member judges.
- 2) Examining cases in a trial.
- 3) Decide on a case that has been tried.

The judge's job is not to punish, the judge's job is to uphold the law and solely decide according to the law based on valid and convincing evidence obtained in the trial. The preparation of a decision must be in accordance with the legal facts revealed in the trial through the process of examining witnesses, defendants and evidence because the legal facts contained in the decision are the same as those in the trial minutes. Legal facts are obtained from valid evidence based on the judge's assessment which is believed to be correct by taking into account article 173 paragraph (6) of Law no. 31 of 1997, namely the agreement between the statements of the witnesses. Correspondence between witness statements and other evidence. The authority of the Court is assessed by a Judge's decision which is of sufficient quality so that justice seekers feel satisfied with a responsible decision based on a legal basis and strong reasons and considerations so that it can be accepted by the justice seeking community.

In Law Number 31 of 1997 concerning Military Justice, it is explained that a military judge is an official who exercises judicial power in a court within the Military Justice environment. The presiding judge in a Military Court trial has the lowest rank of major, while member judges and military prosecutors have

the lowest rank of Captain. The lowest court clerk has the rank of Assistant Second Lieutenant (*PELDA*) and the highest is the rank of Captain. Judges at the Military Court are appointed and dismissed by the President as head of state on the recommendation of the Commander in Chief and based on the approval of the Chief Justice. Judges have the freedom to decide on a case which is guaranteed in Article 24 paragraph (2) of the 1945 Constitution which states that the power of the Judiciary is exercised by the Supreme Court and judicial bodies subordinate to it in the general court environment, religious court environment, military court environment, administrative court environment. State Enterprises and by a Constitutional Court, the legal issue in Decision Number: 51-K/PM I-04/AD/VII/2021 is that the imposition of Narcotics crimes is not in accordance with Law no. 35 of 2009 concerning Narcotics. The judge decided that there was no medical or social rehabilitation for the defendant and the additional punishment in the form of dismissal from military service did not fulfill substantive justice. As specified in Articles 54, 55, 103, and 127 of Law no. 35 of 2009 that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation, the judge who examines the case of narcotics addicts can decide to order the defendant to undergo treatment and/or care through rehabilitation. Furthermore, referring to Article 24 paragraph 1 of the 1945 Constitution of the Republic of Indonesia, where the judicial power is an independent power to administer justice to uphold law and justice (Medlimo, R. A., Septania, A.D., Hapsari, H. O., Zuleika, M. F., & Agustin, T, 2022).

So far, the military justice system has often been considered by society as a closed system. This has given rise to negative prejudices among the public that the law enforcement process against guilty military members does not take place fairly and objectively. Legal practitioners also stated that military court decisions in cases of minor offenses tend to be lighter. One reason is the lack of information channels connecting the military justice system with the general public. For example, there is a lack of a public relations unit that can provide explanations to the public regarding the process of resolving a case. For this reason, the military legal system often does not receive adequate attention.

There are no regulations that specifically mention legal immunity for police and soldiers. All are considered equal before the law with the principle of Equality Before the Law or equality before the law. General criminal laws that apply to all individuals also apply to members of the military. This means that if a soldier commits a criminal act that is not specifically regulated in the Military Criminal Code (KUHPM), then the applicable provisions are the general criminal law contained in the Criminal Code (KUHP) and statutory regulations. more specific. In this context, if a military member commits a criminal act, he must receive a heavier punishment than a civilian. This is because military members are expected to have a high level of discipline. This is because the main task of military members is to maintain the country's defense and security from all disturbances.

The existence of criminal law that applies to military members aims to maintain integrity and discipline within military institutions, as well as ensuring that military members are responsible for their actions (Kartika, Medlimo, 2023). Heavier sanctions for perpetrators of criminal offenses in the military also have a deterrent function, to prevent other military members from committing similar legal violations. Despite harsher penalties, it is important to ensure that legal proceedings against military members continue with the principles of justice, proportionality and human rights guaranteed. The application of strict and fair punishment is an integral part of maintaining integrity, discipline and public trust in the military.

TNI members who commit disgraceful actions and do not deserve to be used as role models. Like the case that occurred in the decision of the Military Court I-04 Palembang with Decision Number: 51-K/PM I-04/AD/VII/2021 on behalf of the Defendant Tara, that the defendant was regulated and threatened with a crime in Article 127 paragraph (1) letter a Law no. 35 of 2009 concerning Narcotics: "Abuse of class I narcotics for oneself.

3. Methodology

This research is a type of Normative Juridical and Empirical Juridical research. Normative Juridical research is carried out based on legal materials such as legal theory, legal principles and legislation related to research. Meanwhile, Empirical Juridical is conducted by interview. The analysis used is Qualitative.

4. Discussion

4.1 Basic Legal Considerations for Military Judges in Deciding Criminal Cases of Narcotics Abuse

On Saturday, April 17 2021, at around 23.30 WIB, the Defendant was arrested by Danramil 421-08/Palas and Pasi Intel as well as members of the Intel Kodim 0421/LS team and then taken to Kodim 0421/LS while the Defendant was at Mr. Kh. Munadir in Pematang Pasir Village was having a friendly meeting, and was detained in the detention room of Kodim 0421/LS for interrogation by the Intel Kodim 0421/LS team in the immoral case of sexual harassment (sodomy) which was allegedly committed by the Defendant against Mr. Misyadi. Furthermore, on Monday 19 April 2021 at approximately 13.00 WIB, Pasi Intel Kodim 0421/LS and Serka Dedi Haryaman carried out a urine test on the Defendant at Madempom 11/3 Lampung using a tool in the form of a DOA TEST brand Test Pack with the results of the Defendant's urine being positive for the substance. Amphetamine and Metamphetamine are suspected to be methamphetamine-type narcotics.

After that, Investigators from Denpom 11/3 Lampung together with Lidpamfik personnel from Denpom 11/3 Lampung, namely Witness-1 along with Provost Kodim 0421/LS Witness-2 took the Defendant to the UPTD Provincial Health Laboratory Hall. Lampung to undergo an official urine test to determine the legality of continuing the legal process against the defendant. After interrogation and further investigation, information was obtained from the defendant's confession. The first time the Defendant consumed crystal methamphetamine was in 2016 with a civilian named Br. Saka in the Pasar Semarang Baru area, Purwosari Village at a friend's house, Mr. Saka, then in December 2020 the Defendant also consumed crystal methamphetamine with Mr. Saka. The defendant last consumed methamphetamine which he got from Mr. Saka which had been put in a small plastic bag at his house on April 9 2021 (Henianti, Dini Dewi, 2017). Every time the Defendant consumed methamphetamine-type narcotics obtained from Brother Saka along with his equipment, the narcotics were consumed in the following way:

- 1) First, the Defendant took the aqua bottle cap which had a hole in it.
- 2) Then the Defendant inserted 2 (two) pipettes, one used as suction and the other used as exhaust.
- 3) Then the Defendant put the methamphetamine into a glass pipe, then burned it until the methamphetamine turned into liquid and then left it again until the methamphetamine froze and then the frozen methamphetamine was put into a pipette and then burned, then the Defendant inhaled it from the pipe inhaling more than 5 (five) suction.

When consuming methamphetamine narcotics, what the Defendant felt was that his body felt light, his mind was calm, fresh, excited and did not feel sick, but after the effect of the methamphetamine narcotics disappeared, the Defendant's body felt sick, he felt weak and lazy and sleepy. Then, the results of laboratory examinations at the UPTD Provincial Health Laboratory Center. Lampung carried out by PNS Widyawati, Amd.F based on Laboratory Inspection Minutes No. Lab. 2437-1 9.B/HP/IV/2021 dated 21 April 2021, in the Defendant's urine sample, a narcotic substance of the type METHYLENE DIOXY METHAMPHETAMINE (MDMA / ECSTASY) was found, which is a class I narcotic substance based on Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The reason the Defendant consumed methamphetamine was only as a sedative, because the Defendant was in debt of Rp. 245,000,000.00 (two hundred and forty-five million rupiah) and must be paid, while all the money has been used by the Defendant for the egg-laying chicken business, while the Defendant's business conditions are in decline and it is difficult to pay the debt, so the Defendant is experiencing stress.

The Defendant has admitted that he deliberately consumed crystal methamphetamine only for himself and not to distribute or give to other people and the Defendant is not a sick person who needs strong medication or a person who is dependent on drugs and also understands that consuming narcotics is prohibited by the State, so that the Defendant does not have the right to consume it. In other words, the Defendant has fulfilled the elements of a criminal act as regulated and punishable by crime in Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics. Apart from that, the defendant was also involved in another crime, namely the crime of immoral harassment (sodomy). So the Defendant was sentenced to 9 (nine) months. Determines that the entire time the Defendant is in custody is deducted from the sentence imposed. And additional criminals were dismissed from TNI-AD service (Medlimo, R. A, 2022).

The Military Prosecutor's Criminal Complaint (Requisitoir) submitted to the Panel of Judges, which in essence the Military Prosecutor stated that:

- 1) The defendant is legally and convincingly proven guilty of committing a criminal act: "Misuse of Class I Narcotics for oneself." As regulated and threatened in Article 127 paragraph (1) letter a of Law no. 35 of 2009
- 2) Therefore, the Military Prosecutor requests that the Defendant be sentenced to: Principal Sentence: 18 (eighteen) months of imprisonment shall be deducted while the Defendant is in temporary detention. Additional punishment: Dismissal from military service.
- 3) Determine evidence in the form of letters: 1) 4 (four) sheets of laboratory examination report No. Lab. 2437-19.B/HP/IV/2021 dated 21 April 2021 concerning methamphetamine and ecstasy pills.
2) 1 (one) DOA Brand Peck Test remains attached to the case file.
- 4) Charge the defendant a case fee of IDR 10,000 (ten thousand rupiah).

the Panel of Judges judged in handing down the decision:

- 1) Declare that the defendant mentioned above, namely Tara, Serka NRP 21040051820983, has been legally and convincingly proven guilty of committing the following criminal acts: "Abuse of class I narcotics for oneself".
- 2) Punish the Defendant therefore by:
 - Primary Crime: Imprisonment for 9 (nine) months. Determines that the entire time the Defendant is in custody is deducted from the sentence imposed.
 - Additional Penalty: Dismissal from military service.
- 3) Determine evidence in the form of items:
 - 4 (four) sheets of laboratory examination results report No. Lab. 2437-19.B/HP/IV/2021 dated 21 April 2021 concerning methamphetamine and ecstasy pills.
 - 1 (one) Prayer Brand Peck Test. Seized to be destroyed.
- 4) Charge the defendant a case fee of IDR 10,000 (ten thousand rupiah).
- 5) Order the Defendant to be detained (Alim, M.Z., Triono, A., & Yudhi, R, 2023).

Endah Wulandari stated that a military judge's considerations are matters that serve as a basis or guideline in deciding a criminal case in a military court. Before the judge makes a decision, the judge will evaluate wisely, carefully and cautiously on the strength of the evidence that emerges from the examination and testimony in the trial in accordance with Article 188 Paragraph 3 of the Criminal Procedure Code.

After that, the judge will hold a final meeting to reach a decision based on the indictment and everything that has been proven during the trial. The judge's consideration consists of evaluating the legal aspects and facts that emerged in the trial. In addition, the panel of judges is required to have a good understanding of theoretical and practical aspects, doctrinal views, jurisprudence, and the position of the case being considered, and then apply their opinions firmly (Rayi Saputri, Maya Shafira, & A Irzal Fardiansyah, 2022). The judge's considerations can be classified into 2 (two) categories, namely considerations of a juridical nature and considerations of a non-juridical nature.

1) Juridical Considerations

Juridical considerations are the judge's considerations which are based on legal facts revealed in the trial and which are regulated by law and are required to be explained in the decision. Juridical considerations in decision no. 51-K/PM I-04/AD/VII/2021 are:

- Considering that the Military Prosecutor's indictment letter charges the Defendant with Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics, and in Article 127 paragraph (2) it is stated that "In deciding the case as intended in paragraph (1), Judges are obliged to pay attention to the provisions in Article 54, Article 55 and Article 103 of Law Number 35 of 2009 concerning Narcotics. That during the trial the fact was revealed that the Defendant had consumed crystal methamphetamine 3 (three) times, but did not feel dependent if he did not consume narcotics, and the Defendant from the start of the trial stated that he was in good health, there were no physical signs that the Defendant was a narcotics addict , so that the Defendant is not categorized as an addict. Therefore, the Panel of Judges considered that the Defendant did not fall into the category of victim. So the Panel of Judges was of the opinion that the Defendant did not need rehabilitation, either medical rehabilitation or social rehabilitation.
- Considering that the evidence in this case is in the form of:
4 (four) sheets of laboratory examination report results No. Lab. 2437-19.B/HP/IV/2021 dated 21 April 2021 concerning methamphetamine and ecstasy pills. 1 (one) Prayer Brand Peck Test. It is evidence of the consequences of the actions carried out by the Defendant and is closely related to this case, therefore the Panel of Judges is of the opinion that the status of the evidence in the form of the letter above needs to be determined, namely confiscated for destruction.
- Considering that the Defendant's actions are a reflection of the Defendant's attitude and behavior which does not care and is obedient and obedient to applicable legal provisions and orders from the Commander who often gives directions during the Commander's hours to stay away from the dangers of Narcotics and also the Defendant does not show behavior as a Soldier TNI who say Marga and swear Soldier.
- Considering that the legal norm for the additional penalty of dismissal from military service is regulated and based on article 26 of the Criminal Code which states "Dismissal from military service with or without revocation of the right to enter the Armed Forces. This additional sentence can be imposed by the judge at the same time as the decision to impose the main sentence on a military person who, based on the crime committed, is deemed no longer worthy of remaining in the military." This provides an understanding that the additional penalty of dismissal from military service can be imposed on any soldier who has been legally and convincingly proven guilty of committing the crime for which he is charged and sentenced to "the death penalty or imprisonment". The next meaning is that based on the actions he has committed, the person concerned is deemed no longer fit to remain in the military.

2) Non-Judicial Considerations

Non-judicial considerations are the judge's considerations that are not based on the juridical facts revealed in the trial, but look at the background of the defendant's actions, the consequences of the defendant's actions, the defendant's personal condition, the defendant's socio-economic situation, and the defendant's religious factors. Non-judicial considerations in decision no. 51-K/PM I-04/AD/VII/2021 are:

- Considering that the factors that influenced the Defendant to commit a criminal act were because the Defendant was in debt of Rp. 245,000,000 (two hundred and forty-five million rupiah) and must be paid while all the money has been used by the Defendant for business, while the Defendant's business condition is in decline and it is difficult to pay the debt, so the Defendant is experiencing stress. In addition, judges must consider factors related to social aspects in the decision-making process regarding a case, these factors include:
- Pay attention to the sources of unwritten law and the values that live in society.
- Pay attention to the good and bad characteristics of the defendant as well as mitigating and aggravating factors.
- Pay attention to whether or not there is peace, blame, the role of the victim.
- Community factors, namely the environment in which the law applies or is applied.

- Cultural factors, namely as a result of creative works and feelings that are based on human intention in social life.

Military judges' considerations include matters that form the basis or guide for making decisions in criminal cases before military courts. Before making a decision in a case, the judge must examine every important information about the legal data and facts presented in the trial. Judges pay attention to aspects related to an individual's ability to be punished, including subjective conditions such as guilt, the individual's ability to be responsible, and the absence of excuses. Apart from that, the judge also assesses objective requirements, which include whether the action carried out is in accordance with the elements of the offense, violates the law, and has no justification (Hutapea, Tumbur Palti D. dan Gilang, Sri, 2019). A legal event can be considered a criminal act if it fulfills all the criminal elements, which consist of:

1) Objective

Refers to actions or actions that violate the law and do not pay attention to the impacts prohibited by law, focusing on the act itself which can pose a legal threat.

2) Subjective

Refers to actions carried out by a person or group of people that result in undesirable consequences according to law, with emphasis on the existence of the individual or group carrying out the action.

According to Nikmah Rosidah, judges are prohibited from refusing to examine or try a case. Trial is a series of actions carried out by judges to receive, examine and decide criminal cases based on the principles of freedom, honesty and impartiality during court hearings in accordance with Article 1 Paragraph 9 of the Criminal Procedure Code. Judges may not reject a case on the grounds that there are no applicable legal regulations or that the legal regulations are unclear (Mustofa, A, 2017). Therefore, judges are considered to have sufficient legal knowledge. If legal rules do not exist, he must look for them using the legal knowledge he has.

If the legal rules are unclear, he must interpret them; and if there are no written legal rules, he can refer to customary law (Medlimo, R. A, 2024). Judges, as state officials and law enforcers, are obliged to understand, follow and comply with legal values and the sense of justice that exists in society. Judges must have impeccable integrity, be honest, fair, professional, and have experience in the legal field. Apart from that, they are also obliged to comply with the Code of Ethics and Code of Conduct for Judges, in accordance with the provisions in Law no. 48 of 2009.

Control over the continuity of TNI leadership in handling TNI soldiers involved in narcotics cases can be identified through regulations in the form of TNI leadership Telegram Letters (ST) and Commander in Chief Regulations (Perpang), including:

- 1) TNI Commander ST No. ST/292/2004 dated 16 December 2004, regarding instructions to take firm action against members of the TNI, civil servants and their families who are involved in the distribution or abuse of narcotics, psychotropics and precursors, and other addictive substances according to applicable legal procedures and regulations.
- 2) TNI Commander ST No. ST/444/2007 dated 26 November 2007 concerning Instructions for handing over cases of TNI members involved in the abuse of narcotics, psychotropic substances and other addictive substances to military courts in accordance with the legal process in order to have a deterrent effect.
- 3) TNI Commander ST No. ST/398/2009 dated 22 July 2009 concerning the trend of increasing criminal acts of abuse of narcotics, psychotropic substances and precursors, and other addictive substances involving soldiers and their families within the TNI, so that maximum efforts to prevent them are implemented.
- 4) TNI Commander ST No. ST/153/2013 dated 4 May 2013 concerning instructions to take firm action against every TNI soldier and civil servant who is proven guilty of abusing narcotics.
- 5) TNI Commander ST No. ST/209/2010 dated April 6 2010 concerning prevention and action against abuse of narcotics, psychotropics and other addictive substances.

- 6) TNI Commander ST No. ST/574/2013 dated 24 May 2013 concerning prevention of abuse, distribution and eradication of narcotics, psychotropics and other addictive substances within the TNI.
- 7) Commander in Chief Regulation No. 27 of 2013 concerning prevention, eradication of abuse and illicit trafficking of narcotics within the TNI.
- 8) Minister of Defense Regulation no. 18 of 2019 concerning Prevention and Eradication of Abuse and Illicit Trafficking in Narcotics and Psychotropics and Other Addictive Substances Within the Ministry of Defense and the Indonesian National Army.

Law enforcement carried out by the TNI against narcotics abusers is currently carried out firmly while still paying attention to one very important principle in law enforcement within the TNI, namely the principle of military interest. This is explicitly stated in the general explanation of the Military Justice Law that in the judicial process, military interests are always balanced with legal interests. Military judges who will decide narcotics cases must not only look at matters from the perspective of the law, they must also always consider military interests in their decisions.

In carrying out national defense functions, the principle of military interests must take precedence over group or individual interests, including in the military justice process, military interests take precedence and are balanced without ignoring legal interests. Military interests are one of the principles known in military justice, these principles are detailed as follows:

1) Principle of Unity of Command

In military life, with its organizational structure, a commander has a central position and is fully responsible for his units and subordinates. Therefore, a commander is given the authority to hand over cases to resolve military efforts submitted by his subordinates through administrative efforts.

2) The Principle of Commanders being Responsible for Their Subordinates

In the life system and characteristics of military organizations, commanders function as leaders, teachers, fathers and trainers, so that a commander must be responsible for his units and subordinates.

3) Principle of Military Interest

In carrying out national defense and security, military interests take priority over group and individual interests. However, specifically in the judicial process, military interests are always balanced with legal interests, prioritizing military interests is intended to serve the interests of administering national defense. In this regard, it can be explicitly seen in the formulation of Article 5 paragraph (1) of the Military Justice Law: "...Military Justice is the executor of judicial power within the Armed Forces to uphold law and justice by taking into account the interests of administering state defense and security..." This means that in the law enforcement process within the scope of military justice, we must always pay attention to the interests of the administration. National defense is the authority of the TNI, while state security is currently the authority of the Indonesian National Police (Polri). Thus, the interests of implementing national defense are correlated with military interests (Akib, Triono, Tisnanta, Medlimo, 2023).

4.2 Implementation of Substantive Justice by Military Judges in Sentencing Sentences to TNI Members Who Abuse Narcotics

According to Nikmah Rosidah, every decision issued by the court should reflect the aspirations of the people who seek justice. The judge's decision is important for investigating, resolving and closing cases submitted to court. The judge's decision should not give rise to another crime or a repetition of the crime. Judges in making decisions in a case include three elements, namely justice, legal certainty and expediency (Rosidah, Nikmah, 2019).

- 1) Justice referred to in the judge's decision is not benefiting either party, recognizing the equal rights and obligations of both parties. In making decisions, judges must adhere to applicable regulations so that the decisions reflect the justice expected by society. The winning party has the right to claim or obtain its rights, while the losing party is obliged to fulfill its obligations. To uphold justice, the judge's decision in court must prioritize equal opportunities for all parties involved in the trial. Justice can also be achieved through quick, simple and affordable settlements because delays in resolving cases are considered a form of injustice.

- 2) Legal certainty reflected in the judge's decision is the result of a legal process built on relevant facts in the trial, in accordance with its juridical aspects. The application of the law must be adapted to the context of the case at hand, therefore, judges must have the ability to interpret the law and other regulations on which the decision is based. In this context, judges are expected to organize the cases being tried comprehensively, wisely and objectively. Judge decisions that contain elements of legal certainty will play a role in developing knowledge in the legal field. This is because the judge's final decision is no longer just the opinion of the individual judge, but rather the result of the court institution which is a guide for society.
- 3) A judge's decision that reflects expediency is when the judge not only applies the law textually, but the decision can be executed in real terms so as to provide benefits to the interests of the litigants and benefits to society in general. The decision issued by the judge is a law which must maintain balance in society, so that the public once again has complete trust in law enforcement officials. Judges in their legal considerations with good reasoning can decide a case by placing a decision when it is closer to justice and when it is closer to legal certainty. Basically, the principle of expediency is situated between justice and legal certainty, where judges value the purpose or usefulness of the law in the interests of society. The emphasis on the principle of benefit tends to have an economic nuance. The basic idea is that law is for society or the people at large, therefore the purpose of life must be useful for humans.

The principle of fair justice is a norm that indicates the creation of a just society and legal system. Without implementation of fair trial principles, innocent individuals can become entangled in the criminal justice system and risk imprisonment. Without the principles of a fair trial, public trust in the law and the justice system can collapse. In the realm of criminal justice, the concept of due process of law is defined as a legal process that takes place well, correctly and fairly.

A fair trial is a basic step to ensure that individuals are not punished unfairly. A fair legal process is realized when the law enforcement officers involved not only carry out their duties in accordance with applicable regulations, but also guarantee the implementation of all the rights that have been established for suspects or defendants. A fair legal process must also reflect the principles and principles that form the basis of the legal process, even though these principles or principles may not be stated explicitly in positive legal regulations.

Substantive justice is a concept that emphasizes justice related to the substance or content of legal decisions. Substantive justice involves aspects such as truth, fairness, and wisdom of a decision taken by a judge. The factors of rationality, honesty, objectivity, impartiality, non-discrimination, and conscience, all play an important role in realizing substantive justice in the judicial process (Krisnawati, 2022).

The entire decision-making process must take these values into account to reach decisions that are fair and in accordance with law and morality. Substantive justice requires judges to ensure that the decisions taken are not only formalistic, but also take into account the substance of the issue being decided. This requires a depth of understanding of the social context, the impact of decisions on the various parties involved, and consistency with just legal principles.

The application of substantive justice by military judges continues to refer to the same principles of justice as in civilian courts. However, there are some differences that may arise due to the special characteristics of military courts, namely:

- 1) Cases handled in military courts often relate to military law, including violations of the military code of conduct, crimes in a military context, or cases involving military personnel.
- 2) Military judges must consider the military code of ethics and discipline in making decisions. This may include considerations about the responsibilities and discipline involved in military life.
- 3) Sanctions given in military courts may be different from those given in civilian courts. This may include specific disciplinary sanctions for military personnel.

Nonetheless, military judges are expected to apply the principles of substantive justice. Military judges must ensure that their decisions are based on careful analysis of the facts, objective judgment, impartiality, and applicable legal principles, while taking into account the specific context of the case at hand in the military domain. In addition, military judges are also required to maintain their independence in the decision-making process, ensuring that decisions taken are not influenced by internal pressure from the military structure and comply with ethical and legal standards that apply outside the military context.

The author analyzes that in the decision of the panel of judges to impose the crime of narcotics abuse, Decision Number: 51-K/PM I-04/AD/VII/2021 has not implemented substantive justice and is not in line with Article 127 of Law no. 35 of 2009 which states that "In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation." Meanwhile, Regulation of the Minister of Defense Number 18 of 2019 concerning Prevention and Eradication of Abuse and Illicit Trafficking in Narcotics, Psychotropics, and Other Addictive Substances within the Ministry of Defense and the Indonesian National Army states that TNI soldiers who abuse narcotics are required to undergo medical and social rehabilitation (Zahrani, S.S., Nurmayani, N., & Deviani, E, 2022).

As we have known so far in practice, some TNI soldiers who were dismissed from military service due to narcotics abuse did not participate in medical rehabilitation or social rehabilitation programs, so that when they returned to society, their condition had not fully recovered from narcotics dependence. This is not in line with the aim of current punishment which aims to ensure that defendants realize their mistakes, improve themselves, and avoid repeating criminal acts so that they can be accepted again by society, play a role in development, and live a good and responsible life. TNI soldiers who are discharged without supervision and control from TNI authorities, in a condition of narcotics dependence, carry a big risk because they have special skills acquired while on duty (Mulyana, N., Asep, 2020).

In imposing additional penalties, namely dismissal from military service, according to the author, dismissal of TNI members involved in narcotics cases must be carried out with careful consideration and clear evidence that the defendant is a narcotics user or dealer. However, if during the trial it is revealed that the defendant was only a victim of narcotics abuse in a mild situation, for example when he underwent a positive urine test because he consumed drugs containing narcotics as prescribed by a doctor, then the judge needs to make an exception in his decision (Rahma, S., Triono, A., & A.T., M.E.P, 2024). The judge's decision must consider justice for all parties, with evidence showing that the defendant did not use narcotics directly. In cases where a urine test shows a positive result due to the consumption of drugs prescribed to cure an illness, the additional punishment of dismissal from military service is considered inappropriate.

This dismissal could cause them to carry out illegal activities such as joining dealers or narcotics dealers and robbery because the Defendant feels that he can no longer apply for a job with a track record or criminal record, namely being fired from military service. In the context of the TNI leadership's rejection of the implementation of medical and social rehabilitation for TNI soldiers involved in drug abuse, it would be better if this rejection was not only conveyed verbally or via Telegram Letter. It would be more appropriate if this were regulated in an official, binding regulation, such as the TNI Commander's Regulation. Thus, there will be more detail regarding which types of criminal acts can be subject to imprisonment with or without medical and social rehabilitation and dismissal from military service in accordance with the mandate of Law 35 of 2009 concerning Narcotics jo. Military Criminal Code jo. UU no. 12 of 2011 concerning the Formation of Legislative Regulations.

5. Conclusion

The basis for military judges' legal considerations regarding *TNI* members who abuse narcotics consists of juridical and non-juridical considerations. The judge's juridical considerations in decision no. 51-K/PM I-04/AD/VII/2021 has fulfilled all the elements of Article 127 paragraph (1) of Law no. 35 of 2009 concerning Narcotics. The judge's philosophical considerations in decision no. Judges in making

decisions in a case must include justice, legal certainty and expediency. In decision no. 51-K/PM I-04/AD/VII/2021 military judges are deemed not to have implemented substantive justice and are not in line with Article 127 of Law no. 35 of 2009 which states that "In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation." Meanwhile, Regulation of the Minister of Defense Number 18 of 2019 concerning Prevention and Eradication of Abuse and Illicit Trafficking in Narcotics, Psychotropics, and Other Addictive Substances within the Ministry of Defense and the Indonesian National Army states that *TNI* who abuse narcotics are required to undergo medical and social rehabilitation.

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