

# Criminological analysis of narcotics crime verdicts committed by members of the military (Study of Military Court Decisions)

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## Abstract

**Purpose:** The main problems in this thesis are 1) How is the construction of narcotics crimes committed by military personnel reviewed from the legal and criminological aspects? 2) What is the background to the occurrence of narcotics crimes imposed by judges to impose penalties in their decisions?

**Research/methodology:** The research method in this thesis uses a normative legal research type with a descriptive analytical research nature. The data used in this thesis is secondary data supported by data from interviews. The analysis is carried out qualitatively and conclusions are drawn deductively.

**Results:** Based on the results of the research and discussion, it was concluded that the construction of the occurrence of Narcotics Crimes committed by military personnel was seen from the legal aspect, namely taken from three military court decisions and each decision was described so as to know what was behind not being dismissed from military service, also seen from the criminological aspect, namely the Rational Choice Theory (RCT). Humans are free to choose their behavior, whether to obey or violate, based on rational considerations, these theories are supported by legal process data and the results of the resource person's answers. For Military Judges, they should provide stricter sanctions against narcotics perpetrators committed by military personnel, in order to provide a more deterrent effect on the perpetrators and be a lesson for other military personnel and change the negative public view of the Indonesian National Army.

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## 1. Introduction

Criminology as a social science that continues to experience development and improvement. This development and improvement is due to the pattern of social life of society that continues to experience changes and differs between one place and another and also differs from a certain time or era to another time or era so that studies on the problem of crime and deviation also experience development and improvement in seeing, understanding, and studying social problems that exist in society and the substance in it. Talking about criminology theory is an effort to understand and reveal various problems about crime and deviation that exist in society.

These criminology theories are the foundation that shows the direction to observers or researchers in determining what problems will be studied and looking for correlations in criminal acts in society and their solutions. Drug crimes have existed since long ago or can be said to be a form of classic crime that will always follow the development of human culture itself, it will always exist and develop at all times even though it may not be too different from before. Crime is an act that has the criteria of an

act called a crime, of course, it is studied from laws and regulations containing criminal acts (Auma, Obici, & Mwesigwa, 2022; Bosu, 1982; Mwesigwa, 2021).

A criminological review will help researchers to understand more deeply about the construction that causes drug crimes committed by the military. Legal instruments in the form of legislation are very necessary to support development in various fields in accordance with development demands and the level of legal awareness and public views on assessing behavior. Advances in science and technology that also influence the way of thinking, behaving and acting. Changes in attitudes, views and orientations of citizens are what influence legal awareness and are also assessments of behavior (Seran, Nursalam, & Tamunu, 2022).

Deviations from various related regulations whose perpetrators are TNI members can be resolved through the military criminal justice system as regulated in Law Number 31 of 1997 concerning Military Justice, as a guideline for the Military in their daily behavior, they must adhere to the Soldier's Oath and Sapta Marga. TNI soldiers must always be examples and role models in their behavior. Regardless of their high or low rank, soldiers are required to uphold the honor of the military name itself and think about actions or statements that can tarnish or damage the good name of the military. Although the TNI is considered one of the role models for the community, in reality there are still many TNI soldiers who commit crimes that are commonly committed by other civilians such as Abuse, Theft, Vandalism, Corruption, Domestic Violence, Immorality and other criminal acts.

Narcotics crimes are one of the crimes that often occur in various parts of the world, including in Indonesia. In the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, specifically in Chapter I, contains general provisions formulated in 22 numbers, each of which has the names of terms. In Article 1 number 1, what is meant by narcotics is: Substances or drugs derived from plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached to this Law.

Drug crimes committed by the military are of particular concern in this study, considering that the military profession has an important role in maintaining the security, order, and sovereignty of the state. Drug crimes committed by military personnel can have a significant negative impact on the image of the military institution and public trust in this institution. Criminology review is the approach used in this study, because criminology is a science that studies criminal acts, perpetrators, and prevention of criminal acts.

Like drug crimes committed by military personnel, I took three decisions on narcotics that were not dismissed from military service, including those in the table below:

Number	Case Number	Military Court	Amar Verdict	Information
1	12-K/PMT-II/AU/V/2021	DILMILTI II JAKARTA	Free from all charges	
2	44-K/PM. III- 14/AD/XII/2021	DILMIL II-08 JAKARTA	Sentenced to one year and six months of rehabilitation	
3	21-K/PM. I- 04/AD/II/2024	DILMIL I-04 PALEMBANG	Sentenced for one year and six months	

Based on the background above, the author is interested in writing a thesis with the title **"Criminological Analysis Of Decisions For Narcotic Crimes Committed By Military Members" (Study Of Military Court Decisions).**

### **1.1. Problem Formulation**

1. How is the construction of narcotics crimes committed by military members reviewed from the juridical and criminological aspects? (Study of Military Court decisions).

2. What is the background for the occurrence of narcotics crimes imposed by judges to impose criminal penalties in their decisions?

## **2. Literature Review**

### **2.1. Military**

In the Military Criminal Code Article 46 Paragraph (1) states that:

Military is those who voluntarily join the Armed Forces who are obliged to be in continuous service during the period of the service bond or all other volunteers in the armed forces and compulsory military personnel during their time in service. The military can be distinguished, namely voluntary and conscriptive military. The military is a military judicial tribunal, which means that they are subject to or apply the provisions of the military criminal law (KUHPM) in addition to the provisions of the general criminal law (KUHP) which include the perpetrator or defendant as a member of the military or TNI.

### **2.2. Narcotic**

Etymologically, narcotics comes from the word "*narcoties*" which means the same as the word "*Narcosis*" which means anesthetic. Narcotics are a group of substances that, when put in the body, will have an effect on the user's body that is calming, stimulating and causing delusion. The properties of these substances mainly affect the brain so that they cause changes in behavior, feelings, thoughts, perceptions, consciousness, and hallucinations in addition to being used in anesthesia. The definition of narcotics according to Law Number 35 of 2009 concerning Narcotics Article 1 number 1 is a substance or drug derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, or very heavy addiction.

The famous narcotics in Indonesia today come from the word "*Narkoties*", which means the same as the word *narcosis* which means to narcotic. In the past, in Indonesia it was known as *madat*. According to Mardani, what is meant by narcotics is as follows: Narcotics are drugs or substances that can calm conditions, cause unconsciousness or anesthesia, relieve aches and pains, cause drowsiness or stimulation, can cause stupor effects, and can cause addiction or addiction and are designated by the Minister of Health as narcotics (Mardani 2008).

### **2.3. Provisions of Article 114**

The provisions of Article 114 of Law number 35 of 2009 concerning Narcotics which reads that every person who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in the sale, sale, exchange, or delivery of class 1 narcotics, shall be sentenced to life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp 1,000,000,000.00 (one billion rupiah) and a maximum of Rp 10. 000,000,000.00 (ten billion rupiah).

### **2.4. Military Courts**

The Military Court is the executor of judicial power within the armed forces to uphold law and justice by paying attention to the interests of state security defense administrators. The establishment of the military judicial institution is nothing but to crack down on members of the Indonesian National Army who commit criminal acts and become one of the control tools for TNI members in carrying out their duties.

According to Law Number 31 of 1997 concerning Military Courts, article 1 number 1, namely: The Court is the body that exercises judicial power in the military judicial environment which includes the Military Court, the High Military Court, the Main Military Court, and the Battle Military Court. The Jurisdiction of the Military Court II-08 Jakarta covers the city of Jakarta and its surroundings, which is the capital and seat of government of Indonesia. As a political, economic, and cultural center, Jakarta is a dynamic city with a variety of activities and potential risks of criminal acts, including narcotics crimes.

## **2.5. Criminal Liability**

Criminal liability leads to the criminalization of the perpetrator, if he has committed a criminal act and fulfills the elements that have been determined by law. From the perspective of the occurrence of a prohibited (mandatory) act, a person will be held criminally responsible if his action is unlawful or *rechtsvaardigingsgrond* or (justifying reason). From the perspective of the ability to be responsible, only those who are "able to be responsible" can be held accountable for their crimes.

The criminal liability system in Indonesian criminal law currently adheres to the principle of error as one of the principles in addition to the principle of legality in Article 1 of the Criminal Code. Criminal liability is a form of action of the perpetrator of a criminal act for the mistakes he commits. Thus, the occurrence of criminal liability because there is a mistake that is a criminal act committed by a person, and there are rules that regulate the criminal act.

## **2.6. Narcotics Crime**

Narcotics abuse is a crime and violation that threatens the safety, both physically and mentally of the user and also to the surrounding community socially, so with a theoretical approach, the cause of narcotics abuse is a material offense, while the act to be held accountable by the perpetrator is a formal offense (Tarasari & Nasywa, 2021). Narcotics crimes are special criminal acts outside the Criminal Code, this is expressly stated in Article 25 of Government Regulation Number 24 of 1960 which came into effect on June 9, 1960 concerning the investigation, prosecution and examination of criminal acts. Special criminal law is a criminal law stipulated for a special class of people, including military criminal law (special people) and fiscal criminal law (special acts) and economic criminal law (Andrisman 2010).

## **2.7. Narcotics Abuse in Indonesia**

The current narcotics cases are very surprising because the victims are mostly young people who are still very productive so that the threat of damage to the nation's next generation is in front of our eyes. Narcotics abuse currently does not only involve high school students and students but has penetrated students at the elementary level. Basically, narcotics in Indonesia are drugs needed in health services, so their availability needs to be guaranteed. On the other hand, narcotics can cause dependence if misused, so that it can result in physical, mental, social, security and public order disturbances which ultimately disrupt national resilience. Because of these detrimental properties, narcotics must be properly monitored nationally and internationally.

It can be said that at this time Indonesia is being hit by very serious narcotics abuse because it threatens the younger generation. Adolescents are a group that is vulnerable to narcotics abuse because in addition to having a dynamic, energetic nature, always wanting to try, they are also easily tempted and easily discouraged so that they easily fall into the problem of narcotics abuse (Hamzah, 1994; Natamiharja, Panjaitan, & Setiawan, 2025; Setiadi & Andriasari, 2013).

## **2.8. Military as the Subject of Criminal Acts**

Juridically, the definition of military is regulated in the General Provisions of Article 1 number 1 in Law Number 25 of 2014 concerning the Law of Military Discipline, namely the military is a member of the military force of a country which is regulated based on the provisions of laws and regulations. S. R. Sianturi (2020) gave his opinion in his book *Military Criminal Law*, the military as the subject of criminal acts as follows:

If you look at the provisions of article 1 paragraph (2) of the Criminal Code which in principle requires the application of a criminal penalty that is beneficial to the suspect, in the case mentioned above, of course, a general criminal act with a lighter criminal threat is desired. However, article 63 of the Criminal Code stipulates otherwise, namely the application of the most severe criminal provisions (first paragraph) or the application of special criminal provisions (second paragraph). If a mixed criminal act occurs, *the* military simultaneously becomes the subject of a general criminal act and a military criminal act. A military is the subject of a general criminal act and also a subject of a military crime. Because the reason for the revision of the Criminal Code specifically (separately) is, among

other things, for the aggravation of criminal offenses, then in the event of a mixed criminal act, the criminal provisions listed in the Criminal Code are applied, in accordance with the provisions of article 63 of the Criminal Code (Edla et al., 2025; Effendy, 2018; S.R. Sianturi, 2010).

In addition, the essence of the crime for the military is that as long as it has not been dismissed, it is an act of education or coaching with the intention that after the military has served its sentence, it must return to become a good military in its unit, both in terms of consciousness from itself and as a result of educational actions while in the Military Correction (Hagan, 2013; Soesilo, 1982; Zailani, Idham, & Erniyanti, 2023).

## **2.9. Definition of Criminology**

Criminology is a science that studies crime. The term criminology invented by P. Topinard, a French anthropologist, literally comes from the word "*crimen*" which means crime or criminal and "*logos*" which means science, then criminology can mean the science of crime or criminals (Santoso & Zulfa, 2001; Wulansari, 2023).

Crime studied in criminology is about the causes of crime and the circumstances that generally affect it, as well as studying ways to eradicate such crime. Criminology formulates crime as destructive behavior and moral acts (in a broad sense), which cause unrest and unrest in a certain society, because the society does not like such behavior (S.R. Sianturi, 2010). So in criminology there is the term why and how, that is: why the person commits the crime and how efforts must be made to prevent the crime from occurring (Anwar 2016). Criminology as a field of inquiry began in Europe in the late 1700s in the writings of philosophers, doctors, physicoists, sociologists and social scientists. Most of the early theories were firmly rooted in a biological framework that has generally been abandoned by modern criminology (Santoso & Zulfa, 2001).

## **3. Research Methodology**

### **3.1. Type of Research and Nature of Research**

In normative research, there are several types, including (Soekanto, 2006):

- a. Research on legal principles such as research on legal rules that live in society.
- b. Research on legal systematics is carried out by examining the basic meaning of law contained in laws and regulations.
- c. Research on legal synchronization, this research aims to reveal the reality to the extent that a certain legislation is compatible vertically and horizontally.
- d. Comparative legal research is a research that finds and looks for differences in various legal systems.
- e. Legal history research seeks to identify the stages of legal developments that are narrowed in scope.

Related to this thesis, the focus of normative legal research is on legal principles, namely by examining and analyzing legal principles related to narcotics crimes in criminological aspects. This research is descriptive analytical, intended to provide an overview of the data as thoroughly as possible to provide an explanation of the provisions related to narcotics crimes committed by members of the military.

### **3.2. Legal Materials**

- 1) Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations, LN No. 127 of 1958, TLN No. 1660 of 1958 (KUHP).
- 2) Law of the Republic of Indonesia Number 39 of 1947 concerning the Military Criminal Code, staatsblad No.167 of 1934 (KUHPM).
- 3) Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army, LN NO. 127 of 2004 TLN No. 4439 (hereinafter referred to as the TNI Law).
- 4) Law of the Republic of Indonesia Number 25 of 2014 concerning Military Discipline Law, LN No. 257 of 2014 TLN. 5591, (hereinafter referred to as the HDM Law).

- 5) Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code of 2023, LN. No. 1 of 2023, TLN No. 6842 of 2023 (Criminal Code)
- 6) Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, LN NO. 143 of 2009 TLN No. 5062 (hereinafter referred to as the Narcotics Law).
- 7) Government Regulation number 39 of 2010 concerning the Administration of TNI Soldiers.

In addition to this secondary data, supporting data obtained from the results of interviews with selected sources was also used, namely judges of the military court II-08 Jakarta, odmil II-07 jakarta and masmil cimahi bandung.

### 3.3. Data collection

Data collection is carried out through literature studies, literature studies are a study used in collecting information and data used in collecting information and data in libraries such as documents, books, magazines, and so on. The literature method is carried out by visiting various libraries, such as the library of the Military Law College and the National Library, to study literature and other sources related to the material discussed in this thesis.

### 3.4. Data Analysis and Drawing conclusions

In this thesis research, the author uses a qualitative analysis method, namely analyzing secondary data to get a conclusion. The data that is analyzed qualitatively is from secondary or predetermined data related to the existence of Narcotics Crimes. Drawing conclusions using deductive logic, meaning the process of reasoning from one or more statements that are general (premise) to reach a specific logical conclusion that is specific. For general laws or regulations that regulate narcotics crimes, and are specifically used in providing rules in the verdict of the crime. So that conclusions can be drawn about the causes of narcotics crimes committed by military members in the jurisdiction of the Military Court II-08 Jakarta and so that the crime does not occur again.

## 4. Results and Discussions

### 4.1. Analysis of the Construction of Narcotics Crimes Committed by Military Members Reviewed from Juridical and Criminological Aspects

The Indonesian National Army in carrying out discipline and service, the military should be a moral and ethical fortress. However, reality sometimes creates loopholes that allow illegal actions, including narcotics crimes. As happened in the recent astonishing case, where a member of the military was involved in a drug trafficking ring. This action not only damages the image of the institution, but also shakes public trust in the protectors of the state. The case reflects a larger dilemma of balancing the strict discipline and pressure faced by soldiers on the ground.

The involvement of military members in this narcotics crime is the result of the influence of the environment in which the perpetrator is domiciled both inside and outside the unit. Environmental influence is the main factor in the involvement of military members who commit narcotics crimes. For example, narcotics crimes committed by military members, I analyze from a juridical aspect by taking examples of three decisions from military courts regarding narcotics that are not dismissed from military service, among others, as in the table below:

Table 1. Narcotics crimes committed by military members

No	Number Verdict	Odmil Indictment	Odmil Demands	Judge's Verdict
1	12-K/PMT-II/AU/V/2021	Article 112 paragraph 1 or article 127 of Law of the Republic of Indonesia number 35 of 2009	Imprisoned for 4 years and dismissed from military service	Free from all charges
2	44-K/PM. III-14/AD/XII/2018	Article 112 paragraph 1 or article 127 of Law of the Republic of Indonesia	Imprisonment for 1 year and 6 months and dismissal from military	Sentenced to one year and six months of rehabilitation

			number 35 of 2009	service		
3	21-K/PM. 04/AD/II/2024	I-	Article 127 paragraph 1 letter a of Law no. 35 of 2009	Imprisonment for one year and six months	Sentenced for 1 year and 6 months	1

In the problem of narcotics crimes committed by military members, it will be analyzed from the aspect of criminology, including: Definition of crime and criminals, theories about the causes of crime, efforts to prevent and overcome crime and treatment of crime. In criminology, people who commit crimes are called criminals. Crime is an evil act, an act that violates the law, behavior that is contrary to the prevailing values and norms that have been ratified by written law. There are several definitions of crime, juridically crime is all human behavior that is contrary to the law, punishable which is regulated in the criminal law. Narcotics crimes, in addition to being regulated in the provisions of the law, also contradict the values and norms that exist in society in addition to causing victims.

This kind of action is not justified, especially carried out by the military which should be able to set an example and example to the community, not become the perpetrators of the crime. So that the consequences of his actions are not only detrimental to himself, his family, the Unit, the TNI, but also the nation and state. Narcotics abuse is very inappropriate to be carried out by a TNI soldier who should be an example and example in law enforcement and support government programs in eradicating the abuse of illegal drugs. If it returns to the unit, it will have the potential to shake the discipline of the unit because it will be in the spotlight of other members because there are privileges. Defendants who are not dismissed from military service will have an impact on other unit members that narcotics crimes do not affect the continuation of their careers in TNI units. Meanwhile, narcotics crimes have the potential to be transmitted to other soldiers to consume or use narcotics. Therefore, dismissal from military service against narcotics abusers must be implemented.

Before the decision of a judge with permanent legal force (*in kracht*), the person who committed the crime was considered innocent until the crime could be proven in the trial of the "principle of presumption of innocence". Military members who commit the crime of drug abuse can be said to be criminals because they have committed crimes in accordance with the articles charged. In the trial, what is charged by the prosecutor, if proven legally and convincingly, the perpetrator (defendant) will be sentenced to criminal sanctions. As a soldier who has a chivalrous spirit, he is required to be able to take responsibility for the actions he has committed, therefore the perpetrators of narcotics crimes carry out all legal processes in accordance with the rules and provisions.

Regarding the problem in the thesis, namely narcotics crimes committed by military members, reviewed from the aspect of Criminology, the author uses *Rational Choice Theory* (RCT) to find out the causes of narcotics crimes committed by military members. In the *Rational Choice Theory* (RCT) of scholars Derek Cornish and Ronald Clarke argues "people's decisions to break the law". This approach implies that crime is a behavior that is consciously committed to satisfy the offender's needs such as money, status, sexual desire, and self-actualization. In the process of meeting these needs, perpetrators sometimes even often have to weigh rationally and make decisions based on their limitations, abilities, and the availability of information related to the target. This view argues that basically all human beings have the same nature, which is to always consider the profits and losses of their decisions based on what they get to achieve the desired goals, including the perpetrators of evil.

According to the author, the rational choice theory can be associated with the NKK Theory (Intention + Opportunity = crime occurs), in this theory explains the cause of crime in society which starts from intention and opportunity can cause crime if the person prefers and sees from the profit and loss of committing the crime. Based on this theory, it explains that the trigger for the occurrence of a crime is due to the elements of intention and opportunity that are gathered into one so that even if there is an intention but there is no opportunity, it is impossible for a crime to occur. Likewise, vice versa, even if there is an opportunity but there is no intention, it is impossible for a crime to occur.

Rational Choice Theory / *Rational Choice Theory* (RCT) here explains a military member who commits an offense or crime based on the intentions that exist in each of them by considering the benefits and losses they will get because they feel that they have the ability to use even though there is encouragement from outside themselves, but the decision to move the body is themselves, so that the criminal act can be carried out.

#### ***4.2. The analysis that underlies the occurrence of narcotics crimes imposed by military judges to impose criminal penalties in the verdict***

This narcotics crime can be committed by anyone, both civilians and the military. One thing that is different is that if the perpetrator of the criminal act is a military person, then subject to military laws and regulations, this can be understood that for a military person is not only subject to the criminal provisions regulated in the Criminal Code but also the military is also subject to other criminal laws and regulations that are not regulated in the Criminal Code. This can be seen in article 2 of the Criminal Code which states that:

For criminal acts not listed in this code, committed by persons who are subject to the power of the military judicial bodies, the general criminal law applies, unless there are irregularities applied by law.

According to the author, in accordance with article 2 of the Criminal Code, for a military person who commits a narcotics crime regulated in article 112 of Law 35 of 2009 concerning Narcotics, the criminal provisions regulated in the Criminal Code cannot be applied to the military because the provisions regarding narcotics are specifically regulated in the law. Regarding the judiciary which has the authority to prosecute general crimes committed by the military, there are two different opinions. The first opinion states that for a military person who commits a general crime, the authority to prosecute is the general court and for those who commit non-military crimes, the authority to prosecute is the military court. This opinion is based on the provisions in Law number 34 of 2004 concerning the TNI Article 65 paragraph (2) which states that:

Soldiers are subject to the power of the military judiciary in the event of violations of military criminal law and are subject to the power of the general judiciary in the event of violations of the general criminal law regulated by law.

In addition, the first opinion is also justified by the principle of *lex posterior derogat legi priori* which states that the new regulation overrides the old regulation. Where the provisions regarding article 9 of law 31 of 1997 concerning military justice are set aside by the existence of article 65 paragraph (2) of law number 34 of 2004 concerning the Indonesian National Army which is a newer regulation. The second opinion states that for a military person who commits a general criminal act, the military must be tried within the scope of military justice as in article 9 of law 31 of 1997 which basically states that the military court has the authority to try criminal acts committed by a person at the time of committing a criminal act is a military person. Basic placement *lex posterior derogat legi priori* to enforce the provisions contained in article 65 paragraph (2) of the TNI law is not appropriate. Because this principle can only apply if the newly regulated provisions have similar substances or rules. while the rules contained in the TNI law are provisions that regulate military administration, not regulating formal military criminal law. So it is not appropriate if this principle is applied to override the rules contained in Law 31 of 1997.

Furthermore, it can be said that the principle that is more appropriately used is the principle of *Lex specialis derogat legi generali* which states that the law of a special nature (*lex specialis*) set aside general laws (*lex generalis*). Where the provisions regarding the authority of the military judiciary are regulated in Law 31 of 1997 concerning military courts, so that the provisions contained in the TNI law are set aside because they are general provisions. Furthermore, in article 74 paragraph (1) of the TNI law, it is said that, "The provisions as referred to in article 65 apply at the time of the new Law on Military Justice." While paragraph (2) reads "As long as the new Military Justice Law has not been formed, it will still be subject to the provisions of Law Number 31 of 1997 concerning Military Justice."

The author is more inclined to the second opinion related to the authority of military courts in adjudicating general crimes committed by the military. Because of the existence of military courts in Indonesia, it was formed with special circumstances. According to Soegiri, who the author quotes from Tetty Melina Lubis in his book, the arguments for holding military courts that are separate from the general courts include the following:



1. There is a heavy main task to protect, defend and maintain the integrity and sovereignty of the nation and state which if necessary is carried out with the power of weapons and the means of war.
2. Special organization and special maintenance and education are needed with respect to their essential and important duties.
3. He is allowed to use weapons and gunpowder in the performance of the duties assigned to him.
4. It is necessary and then treated against them with harsh, heavy and distinctive legal rules and norms and supported by severe criminal sanctions so that the means of supervision and control of each military to behave and act and behave in accordance with what is demanded by the main task (Lubis 2019).

With this system, the authority of Ankum as the person in charge of its unit feels exceeded and will cause a misunderstanding between the commander as the person in charge of security and order on the one hand and the Inspector who is responsible for enforcing the law on the other. In order to prevent clashes between the Inspector and the commander, in its development looking at the conditions and needs of the military court itself, Law Number 29 of 1954 concerning the defense of the Republic of Indonesia was born which in Article 35 states "War has its own judiciary and the commander has the right to surrender cases".

As a realization of the content of Article 35, Law Number 1 of 1958 concerning the Criminal Procedure Law of the Army was born which amended Law Number 6 of 1950. With the existence of this law, Ankum must participate in determining the fate of its subordinates in the context of resolving criminal cases and limiting interference from other parties in its unit. With the enactment of Law Number 1 of 1958, the authority of the Inspector was transferred to the commander. The transfer of authority as an investigator, prosecutor and case submitter to the commander has reduced the function of the army prosecutor which was previously active to passive. Because the political situation is getting more stable, military life is getting more stable until it is thought to replace the Army Judges and Prosecutors who are still concurrently held by Judges and District Court Prosecutors with Military personnel who are active legal experts. In order to obtain legal experts in the military, in 1952 the Military Law Academy and Military Law College were established.

After obtaining active personnel with legal education, starting in 1961, the personnel of Judges, Army Prosecutors from the District Court were replaced with these active personnel. The replacement of available personnel is based on the instruction of the Minister of Attorney General Number 157/MDJAG/1961/SI dated April 11, 1961 which instructs all military prosecutors of the District Court to hand over their concurrent duties to the Army Prosecutors from the ABRI.

This perfected the principle of *unity of command* in line with the will of Law Number 29 of 1954, on September 19, 1961 a Joint Decree of KASAD and the Attorney General's Minister Number MK/KPTS-189/9/1961 was born where the Attorney General's Minister transferred his authority, power and responsibilities related to the army prosecutor's office. In accordance with Article 9 of Law Number 31 of 1997 concerning Military Justice, associated with Articles 1 and 2 of the Military Criminal Code (KUHPM), the Military Court adjudicates criminal acts based on their subjects, namely soldiers (military) or equivalent. In other words, as long as he is in the military, and commits any criminal act, whether it is a military (pure) crime, such as desertion, insubordination, and others as well as general criminal acts, such as robbery, rape, murder, or theft, and others as well as special criminal acts, such as psychotropic abuse or shabu shabu, narcotics, corruption, and others are tried in military courts that have nothing to do with military duties or positions.

Even if they are not soldiers or those who are equated with soldiers commit criminal acts, and the criminal acts are detrimental to the interests of the military and are carried out solely by the military (connection cases) can be tried in military courts. If civilians (outside TNI civil servants) can be tried by military courts, then TNI civil servants who commit criminal acts that are detrimental to the TNI should be tried by military courts. As the provisions that regulate connectivity, the emphasis is *on the trial of a civilian* in a military court, because the military element (loss) exceeds the civilian element. This provision can be found in article 89 paragraph (1) of the Criminal Code and article 198 paragraph (1) of the Military Justice Law, the provisions of which are exactly the same. The provisions regarding the crime of connectivity are: Criminal acts committed jointly by those who belong to the general judicial environment and the military judicial environment, are examined and tried by a court within the general judicial environment, unless

according to a decree of the Minister of Defense and Security with the approval of the Minister of Justice the case must be examined and tried by a court within the military judicial environment.

Thus, as long as the consequences of the criminal act can be proven to be detrimental to military interests, for example, theft of weapons or ammunition in an arsenal, killing a caraka to obtain military data or information, burning an archive building or military documents, and others, the perpetrator will be tried at the Military Court. For perpetrators of criminal acts, sanctions will be imposed, talking about the issue of sanctions, there are 2, namely criminal sanctions and actions (*maatregel*). Related to the criminal threat in Article 112 of Law no. 35 of 2009 is a criminal sanction of imprisonment for a maximum of four years. Related to this research, the author inventories the Judgments in the jurisdiction of the Military Court II-08 Jakarta every time, which is shown in the following table:

Table 2. Judge's Verdict on Narcotics Crimes in the Jurisdiction Military Court II-08 Jakarta in 2021

Number	Item Number	Judge's Verdict
1.	187-K/PM. II-08/AL/XI/2021	1 year sentence dismissed from military
2.	158-K/PM. II-08/AD/IX/2021	1 year sentence dismissed from military
3.	234-K/PM. II-08/AL/VIII/2021	10 months in prison to be dismissed from the military
4.	130-K/PM. II-08/AL/VIII/2021	NO verdict is unacceptable
5.	120-K/PM. II-08/AL/VIII/2021	11-month sentence dismissed from military
6.	118-K/PM. II-08/AL/VII/2021	1 year sentence dismissed from military
7.	101-K/PM. II-08/AU/VII/2021	11-month sentence dismissed from military
8.	96-K/PM. II-08/AL/VI/2021	Criminal 1 year and 1 month to be dismissed
9.	92-K/PM. II-08/AL/VI/2021	Criminal 1 year and 1 month to be dismissed
<b>Total</b>		<b>9 Cases</b>

Table 3. Judge's Verdict on Narcotics Crimes in the Jurisdiction Military Court II-08 Jakarta in 2022

Number	Item number	Judge's Verdict
1.	296-K/PM. II-08/AD/XII/2022	1 year sentence dismissed from military
2.	291-K/PM. II-08/AD/XI/2022	Free from charges
3.	274-K/PM. II-08/AD/X/2022	9 months in prison to be dismissed from the military
4.	253-K/PM. II-08/AD/IX/2022	Free from charges
5.	252-K/PM. II-08/AD/IX/2022	Free from charges
6.	251-K/PM. II-08/AD/IX/2022	7 years in prison, a fine of 4 billion rupiah, 3 months in prison, dismissed
7.	250-K/PM. II-08/AL/IX/2022	11-month sentence dismissed from military
8.	236-K/PM. II-08/AD/VIII/2022	11-month sentence dismissed from military
9.	235-K/PM. II-08/AD/VIII/2022	5 years in prison, a fine of 800 million in subsidies, 2 months of dismissal from the military
10.	223-K/PM. II-08/AL/VIII/2022	11-month sentence dismissed from military
11.	222-K/PM. II-08/AL/VIII/2022	Criminal 1 year and 1 month to be dismissed
12.	203-K/PM. II-08/AL/VIII/2022	11-month sentence dismissed from military
13.	147-K/PM. II-08/AD/V/2022	11-month sentence dismissed from military
14.	133-K/PM. II-08/AD/IV/2022	11-month sentence dismissed from military
15.	56-K/PM. II-08/AL/I/2022	11-month sentence dismissed from military
16.	6-K/PM. II-08/AL/I/2022	Criminal sentence 1 year and 6 months, fine of 200 million subsidy, 1 month dismissal from the military
<b>Total</b>		<b>16 Cases</b>

Table 4. Judge's Verdict on Narcotics Crimes in the Jurisdiction Military Court II-08 Jakarta in 2023

Number	Item Number	Judge's Verdict
1.	260-K/PM. II-08/AL/XI/2023	10 months in prison, a fine of 800 million in subsidies, 2 months in prison
2.	256-K/PM. II-08/AU/XI/2023	9 months in prison to be dismissed from the military
3.	257-K/PM. II-08/AU/XI/2023	Criminal 1 year 6 months, fine of 500 million subsidy, 3 months in prison, dismissed
4.	253-K/PM. II-08/AD/XI/2023	Criminal 1 year and 6 months, fine of 800 billion subsidy, 3 months in prison, dismissed
5.	252-K/PM. II-08/AD/XI/2023	Criminal 1 year and 1 month dismissed from the military
6.	239-K/PM. II-08/AD/X/2023	Criminal sentence of 7 years and 6 months, fine of 4 billion subsidy, 3 months dismissal
7.	238-K/PM. II-08/AD/X/2023	Criminal 1 year and 6 months dismissed from the military
8.	206-K/PM. II-08/AD/IX/2023	1 year sentence not fired
9.	208-K/PM. II-08/AD/IX/2023	Free from charges
10.	205-K/PM. II-08/AD/IX/2023	1 year sentence not fired
11.	197-K/PM. II-08/AD/VIII/2023	1 year sentence dismissed from military
12.	190-K/PM. II-08/AD/VIII/2023	9 months of non-dismissal
13.	127-K/PM. II-08/AL/EN/2023	10 months in prison to be dismissed from military service
14.	70-K/PM. II-08/AU/II/2023	Criminal sentence 8 months and 10 days to be fired
15.	69-K/PM. II-08/AU/II/2023	8 months in prison to be dismissed from the military
16.	44-K/PM. II-08/AU/II/2023	Criminal sentence of 8 months and 20 days to be fired
17.	43-K/PM. II-08/AU/II/2023	Criminal sentence of 7 months and 20 days to be dismissed
<b>Total</b>		<b>17 Cases</b>

Based on the table, it can be seen that the judge's decision in the crime of drug abuse, imposing prison sanctions ranges from 9 months to 7 years and 1 month in prison. In some cases, it turns out that the judge imposed additional sanctions in the form of dismissal. The author agrees with the judge's decision that states that there is an additional penalty, namely dismissal from military service. Considering that the use of narcotics will greatly affect the arrangement of nerve centers, in this case it will damage a person's mind and soul which can affect a person's performance. There are other effects of these narcotics, namely they can cause dependence, cause a decrease or change in consciousness, loss of taste, reduce and even eliminate pain when used unsupervised.

A member of the military is required to be physically and spiritually healthy, therefore a narcotics user can no longer re-enter his unit. The TNI which is the main component in the country's defense system, and is a state tool tasked with defending, protecting, and maintaining the integrity and sovereignty of the state, and is expected to be able to set an example to the community to prevent and eradicate and not commit criminal acts of narcotics abuse, considering that the military in Indonesia is synonymous with an institution whose members are very obedient and disciplined to the applicable law.

Based on the statement obtained in the interview conducted by the researcher with the Judge of the Military Court II-08 Jakarta, in criminal cases committed by TNI personnel, it must be resolved within the Military Court, including if a TNI individual commits an act that violates criminal law such as narcotics crimes that have a bad impact on the military. Therefore, it is necessary to enforce the law fairly and firmly against the perpetrators of this crime. Military criminal law is a special criminal law

because it is not comprehensive, and is called *Lex Specialist Derogat Legi Generale* which means that special legal rules override general rules. The Military Criminal Code (KUHPM) does not expressly regulate narcotics crimes committed by TNI personnel, thus in this case the Narcotics Law applies.

Based on Article 2 of the Criminal Code which explains that the criminal provisions in the laws and regulations apply to every person who commits a criminal act regardless of whether the perpetrator is a civilian or a TNI person. Therefore, it can be concluded that civilians and TNI personnel who commit criminal acts get the same treatment before the law, namely in the form of criminal sanctions that have been regulated in the Criminal Code, but for TNI personnel in addition to getting Criminal Code sanctions, they also get military sanctions.

Based on the interview conducted by the author with the Military Court Judge, the reason for the application of the Criminal Code is stated in Article 2 of the Criminal Code which states that for criminal acts not listed in the Criminal Code committed by people who are subject to military judicial bodies, the General Criminal Law applies. Thus, the Criminal Code also applies to military members, but the judicial process is still carried out in military courts. And in addition to the imposition of basic sanctions against TNI personnel, it can be accompanied by the imposition of administrative sanctions such as suspension, postponement of promotion, these administrative sanctions can be imposed before these military members are tried and this is military.

Based on the decision of the Military Court II-08 Jakarta, the defendant can be sentenced based on the legal facts at trial and the defendant is legally and convincingly guilty of committing a narcotics crime. In the trial, the Panel of Judges did not find any excuse or justification that negates the unlawfulness of the defendant's actions, so that the defendant's actions can be held accountable as the subject of criminal law and therefore the defendant must be punished and it is appropriate and fair for the defendant to be punished commensurate with his actions. Crimes committed by TNI members, law enforcement officials who have the right to examine and adjudicate cases are Military Judges, while those who have the right to prosecute are Military Inspectors.

Based on the results of research and interviews with judges at the Military Court II-08 Jakarta, that in Article 7 paragraph (1) of Law of the Republic of Indonesia Number 25 of 2014 concerning the Law of Military Discipline "All Military Soldiers in carrying out their duties and obligations must behave and behave in a disciplined manner by complying with the Military Discipline Law". In accordance with the content of the law, it is explained that TNI members are obliged to have obedience and obedience to their superiors, besides that TNI members must uphold honor and always avoid acts that can tarnish and damage the good name of the TNI and its unit, even though TNI personnel commit criminal acts must still be punished without any privileges, where the process of examining cases is carried out according to military court procedures regulated in the Law. Law Number 31 of 1997 concerning Military Courts.

To find out what is behind the occurrence of narcotics crimes committed by military members, the author conducted interviews and research at the Military Court II-08 Jakarta, regarding the background of the occurrence of narcotics crimes committed by military members. From the results of the interview, it was revealed that the factors that cause the occurrence of narcotics crimes basically occur due to several things, including internal factors that come from within the perpetrator and external factors that come from outside the perpetrator, which I describe as follows:

1. Internal Factors (From within the perpetrator)

Factors that originate or exist in the perpetrator which means that what influences a person to commit a crime arises from within the perpetrator himself which is based on the factor of faith and the factor of the perpetrator's desire, which is described as follows, namely:

- a. Faith Factor

One of the faith factors that cause someone to commit narcotics crimes is found in the perpetrator himself. The factor in terms of the belief or belief of the perpetrator is one of the main or most basic factors causing this crime. Religion also functions to shape people's attitudes to life and culture. Belief in religion is the greatest culture in the history of human life.

Religion cannot just come out of the human soul. Religious symbols that are used as a means of communication with God are the first cultures born in humans. If a person is closer or has more faith in God Almighty, it is unlikely that someone will commit a crime. The lack of faith of the perpetrators resulted in them being disobedient and subject to religious teachings, so they committed acts that were prohibited by religion. A person who has a strong belief will avoid criminal behavior.

b. The Desire Factor

The desire factor encourages someone to commit a criminal act. The desire factor is a very strong will that drives a person to commit a crime. The desire of the perpetrators to commit the crime of narcotics abuse arises from the perpetrators' own inner intentions. The desire to improve life or to meet the needs of his life encourages the perpetrators to do things that are considered fast in getting money, namely by becoming drug dealers.

c. Opportunity Factor

What is meant by the opportunity factor here is a situation that allows (gives an opportunity) or a situation that is very supportive for the occurrence of a crime. This opportunity factor is usually very supportive for the occurrence of narcotics abuse crimes. This factor occurs usually because the victim is easily persuaded or also this factor occurs because the perpetrator views that he is able to seduce certain victims so that the desire to get quick money illegally can be carried out.

2. External Factors (Influence from outside the perpetrator)

The factors that cause the occurrence of narcotics crimes also exist from the external influence of the perpetrator. These factors include:

a. Family Factors

Family is the most influential part of shaping a person's character and individuality. The family has a very important role in maintaining or regulating an individual's behavior. A person will act good or bad, one of which is the influence of the family, considering that the first time a person learns to do something, it is from the family. From the results of the research, the families of the perpetrators of narcotics abuse crimes, most of them do not know that one of their families committed a crime, namely misusing narcotics. The lack of control from the family is one of the causes of the occurrence of the narcotics crime. The family is indifferent to the behavior or activities of the perpetrator, resulting in the perpetrator committing his crime. Families who know that one of their members commits a criminal act of drug abuse does not expressly prohibit or prevent such acts, they only think that the most important thing is that their daily needs or needs can be fulfilled from the proceeds of drug trading.

b. Economic Factors

Poverty is the main factor or cause of a person committing a crime. The occurrence of narcotics abuse crimes is one of the most dominant triggered by economic factors. The needs that must be met every day and the increasingly expensive prices of necessities result in a person having to work hard to get an income. The income obtained by the perpetrator is not enough to meet the daily needs of the family, thus causing the perpetrator to take shortcuts by being a drug dealer. The perpetrator feels that by selling and buying drugs, he can earn more and get faster.

c. Environmental Factors

Environmental factors also have an effect on the cause of a person committing a criminal act. The environment in which a person lives, the environment in which a person works, or in the social environment becomes a great influence on a person committing a criminal act. An environment with low social control or control over crime can provide an opportunity for a person to commit a crime.

d. Community Factors

The community referred to here is the victims of the crime of narcotics abuse. People who are victims of narcotics certainly still believe in drug dealers. So that the public does not understand and is often trapped by looking at the background of drug dealers, so that often people are confused and become victims of seductions carried out by narcotics dealers who make them no longer care about the sins that will be obtained, let alone affect others.

e. Technology Factor

The development of technology certainly has an influence on life. This influence includes two sides, namely positive influence and negative influence. We return the effects of globalization to ourselves as the younger generation in order to maintain ethics and culture, so that we are not negatively affected by globalization. However, unfiltered information makes it uncreative, consumptive behavior and makes a closed attitude and narrow thinking. This causes imitating bad behavior. It is easy to be influenced by things that are not in accordance with the customs or culture of a country that are not in accordance with existing norms.

In the abuse of narcotics committed by military members, there are factors that trigger a military person to use or use narcotics, namely:

a. Economic Factors

Economic factors are one of the factors causing narcotics abuse by military members. For example, a military member is having a burden of debt that cannot be repaid so that every day he is dizzy thinking about how to pay it off, finally because he wants to forget about the debt problem, a military member will try to use narcotics. After using these narcotics, it causes its own pleasure effect that they feel. The appearance of this pleasure effect makes a military feel the need to use it many times so that the mind is not confused because of debt and receivables problems.

b. Environmental Factors

The fact of a military member who uses narcotics is that they are invited to try it by their friends. In this case, the friends in question are outside members of the Indonesian National Army. For example, a military member works as a side-by-side guard at a large port with a lot of nightlife, where he meets people who are used to using narcotics, because this unfavorable environment triggers a military member to use this illegal item.

c. Family Factors

In this family factor, what triggers narrotic abusers is a sense of stress due to chaos in the family or the absence of harmony in the household, causing a sense of calming the mind so that they dare to try to use this narcotic.

d. Lack of Supervision by Commanders

The commander plays an important role in the supervision and protection of his soldiers. One form of a commander's supervision of his soldiers to avoid narcotics abuse is to routinely conduct urine tests. With the routine urine test, soldiers will feel afraid to try the narcotics.

e. Lack of Worship

Worship is something that must be done by all mankind. Increasing worship means also increasing one's faith. A believer will not be easily seduced into bad things because he feels fear of God. Lack of faith in a soldier makes him commit drug abuse.

## 5. Conclusion

### 5.1. Conclusion

Based on the discussion and analysis as described in the previous chapters, the conclusions that the author can describe are as follows:

1. The construction analysis of the occurrence of narcotics crimes committed by military members from a juridical aspect is based on three decisions related to the judge's verdict which states that the first verdict is free from all charges, the second verdict is sentenced to one year and six months and rehabilitated for six months, and the third verdict is sentenced to one year and six months without being fired from military service. From the criminological aspect, there are Factors that cause perpetrators to commit narcotics crimes based on research that has been conducted by the author, divided into two, namely Internal Factors and External Factors including Internal Factors which are factors that come from within the perpetrator such as the perpetrator's faith factor, desire factor, and opportunity factor owned by the perpetrator, as well as External Factors that come from the perpetrator's external influence, Such as family factors, economic factors of the perpetrators, environmental factors, community factors in the form of victims who do not understand and are often trapped and technological factors certainly bring influence to life. From the aspect of Criminology, namely *Rational Choice Theory (RCT)*, the necessities of life are used as justifications by the perpetrators so that they deliberately choose to commit the crime as an option.

2. The analysis that underlies the occurrence of narcotics crimes imposed by military judges on military members who commit narcotics crimes is not in accordance with the purpose of punishment, the position of military members who commit narcotics crimes is the first in the imposition of sanctions based on the legal facts in the trial. The Judge's consideration in issuing the decision number 21-K/PM. I-04/AD/II/2024 based on evidence in the form of letters, statements of the defendant and other papers so that the defendant must be sentenced to a penalty/criminality. In addition, the facts obtained during the trial in this case. The Judge of the Military Court I-04 Palembang found things in the defendant or in the defendant's actions that could be accounted for and found guilty according to the law and must be sentenced to a sentence commensurate with his actions so as to provide a deterrent effect and make it a lesson for other members of the military.

## 5.2. Suggestion

Based on the description above and by paying attention to the main problems raised in this thesis research, the researcher suggests the following things:

1. It is better for every member of the military to further improve their mentality, morality, as well as faith and devotion aimed at strong self-control so that they are not easily tempted to do something deviant, and also to prevent being able to avoid bad thoughts and intentions in their hearts and minds to commit drug abuse, especially as addicts and dealers.
2. For Military Court Judges, they always give stricter sanctions and use considerations from the criminological aspect against the perpetrators of narcotics crimes committed by military members, in order to provide a more deterrent effect on the perpetrators and become a lesson for other military members.

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