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The Legal Concept of Rehabilitation for TNI Soldiers Who Commit Narcotics Crimes in Legal Certainty Perspective

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Abstract

This journal aims to discuss the legal concept of rehabilitation for TNI soldiers who commit narcotics crimes from the perspective of legal certainty. Research was carried out through a series of systematic and measurable scientific steps. The method used in this research is to use a qualitative research approach through qualitative analysis based on unique findings in the research. The qualitative research approach that will be used is using juridical-normative research, namely a research method that includes research on the identification of laws and legal events based on legal aspects of a law and its application in the field to the implementation of ideal rehabilitation for TNI Soldiers who abuse narcotics, so that in his research he can review various mechanisms of the military rehabilitation system for narcotics abusers to find patterns of implementation of rehabilitation in court decisions so that better rehabilitation policies can be formulated in the future. Basically, legal policies related to the rehabilitation of narcotics abusers are still not fully implemented properly. This is the result of a tug-of-war between policy makers in the health sector and law enforcement regarding how to handle self-narcotics abusers. This tug-of-war occurs because the position of Narcotics Abusers is formally in two dimensions, namely the health dimension and the legal dimension. Narcotics abusers are criminals who are subject to criminal penalties, but on the other hand, narcotics abusers who are in a state of physical and psychological dependence on narcotics (narcotics addicts) are "sick people" who must be rehabilitated in order to recover, especially TNI who have abused narcotics. Therefore, military courts are given more authority compared to courts in general. Among them is the authority of military courts to dismiss military personnel from military service with the standard of dismissal of a military person who is no longer fit to serve in the military. Dismissal from military service of narcotics abusers is a very important step because it takes into account the military's interests in maintaining compliance with the law, as previously explained. However, it is also necessary to consider medical rehabilitation for offenders after dismissal. From a legal perspective, narcotics abusers are considered both perpetrators of criminal acts and victims. In practice, several TNI soldiers who were dismissed from military service due to drug abuse did not undergo medical rehabilitation, so they returned to society in inadequate conditions and were still dependent on narcotics. This is not in line with the objectives of current punishment, which focus more on awareness, correction and prevention of re-offending. They should be given the opportunity to be accepted back into society after recovering and becoming responsible citizens. TNI soldiers who are fired and left without supervision after dismissal can pose a serious threat because they have special skills that can be utilized in illegal narcotics-related activities.

Keywords: *Concept of Rehabilitation of TNI Soldiers, Committing Narcotics Crimes, Process Based on Law and Legal Certainty.*

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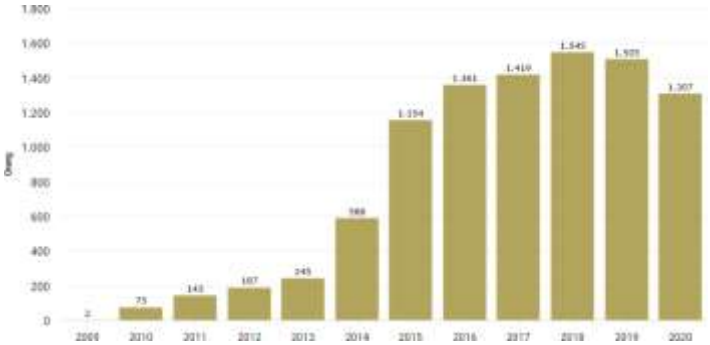
I. INTRODUCTION

So far, legal policies related to the rehabilitation of drug abusers have not been fully implemented properly. This is due to the tug-of-war between policy makers in the health sector and law enforcement regarding how to handle drug abusers for themselves. This tug-of-war occurs because the position of Drug Abusers is formally in two dimensions, namely the health dimension and the legal dimension. Drug abusers are criminals who are threatened with crime, but on the other hand drug abusers who are in a state of drug dependence both phy1sical and psychological (drug addicts) are "sick people" who must be rehabilitated in order to recover. This tug-of-war occurred over a long period of time, namely since the enactment of Law of the Republic of Indonesia Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 along with the Protocol that amended it and the enactment of Law of the Republic of Indonesia Number 9 of 1976 concerning Narcotics. This tug-of-war continued in the enactment of Law of the Republic of Indonesia Number 7 of 1997 concerning the Ratification of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* until the ratification of Law of the Republic of Indonesia Number 22 of 1997 concerning Narcotics. Even now, with the enactment of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, the nuances of attraction are still very thick.

Narcotics crime in Indonesia has spread to various circles. Both the general public, law enforcers, state officials, even in military circles. Data from the 2015 BNN report shows that the number of drug abusers throughout Indonesia is 4,098,029 people. This number increased by 0.02% from the previous year (in 2014).[1] Meanwhile, according to longer and more recent data, namely between 2009 and 2020, there was a large increase for drug abusers in the territory of Indonesia. Here is the data:

Sumber: Databooks



From these data, it can be concluded that the number of suspected drug abusers is increasing

[1] National Narcotics Agency, Annual Performance Report 20x15, (Jakarta: BNN, 2016), p.16.

from year to year starting from 2009 to 2020. Although in 2018 to 2020 it decreased, the number is still very much, especially when compared to 2009. Throughout the period from 2009 to 2019, the number of drug suspects in Indonesia tended to increase until it peaked in 2018, after which it decreased until 2020. The number of drug suspects in 2018 amounted to 1,545 people, while the lowest number of suspects in 2010 was 75 people.

Based on region, North Sumatra is the region that has the largest number of narcotics suspects nationwide reaching 658 people during 2009-2020. Followed by East Java and East Kalimantan with 518 people and 461 people respectively. While within the TNI, the Special Staff of the Military Police TNI Headquarters reported the number of cases of narcotics crimes by TNI Soldiers from 2009 to 2014 in Burhan Dahlan as follows:[2]

1. In 2009, there were 174 drug crimes (fifth after desertion, molestation, traffic violations, decency and crimes against official obligations).
2. In 2010, there were 150 drug offences (sixth after desertion, molestation, crimes against devotion, traffic offences and crimes against public order).
3. In 2011, there were 165 drug crimes (fourth after desertion, persecution and decency).
4. In 2012, there were 161 drug offences (sixth after desertion, molestation, traffic offences, crimes against public order and traffic accidents).
5. In 2013, there were 235 drug crimes (third after desertion and maltreatment).
6. In 2014, there were 201 drug crimes (third after desertion and maltreatment).

Meanwhile, in 2022, based on data from the National Police quoted by BNN, there are around 200 TNI who abuse narcotics. Here is the data:

No.	Pekerjaan Tersangka	Jumlah Tersangka		Jumlah
		Polri	BNN	
1.	PNS	260	9	269
2.	TNI	193	1	194
3.	Polri	399	4	403
4.	Swasta	15.760	212	15.972
5.	Wiraswasta	13.499	276	13.775
6.	Petani	3.174	75	3.249
7.	Buruh	6.932	61	6.993
8.	Mahasiswa	1.716	44	1.760
9.	Pelajar	1.290	20	1.310
10.	Pengangguran	9.001	111	9.112
11.	Narapidana	0	42	42
12.	Nelayan	0	28	28
13.	Sopir	0	28	28
14.	Pelaut	0	2	2
15.	Seniman	0	2	2
16.	Ibu Rumah Tangga	0	10	10
17.	Honorer	0	3	3
18.	Satpam	0	3	3
19.	Tidak Diketaui	0	250	250
	Jumlah	57.224	1.181	53.405

Source: Polri and BNN, March 2022.[3]

[2] Burhan Dahlan, "Criminal Punishment of Drug Abusers by TNI Soldiers and the Impact Caused," (Doctoral Dissertation of Jayabaya University, Jakarta, 2015), p. 16.

[3] National Narcotics Agency, Indonesian Drugs Report *2022, Center for Research, Data, and Information of the National Narcotics Agency, BNN, Jakarta, 2022, p. 78.*

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From these data, it can be concluded that many TNI soldiers abuse narcotics, although not as many as civil servants and police. In fact, according to data that the author found from the 2018 Narcotics Abuse and Illicit Circulation Survey, many TNI soldiers already know the Prevention and Eradication of Drug Abuse and Illicit Circulation (P4GN) program whether they use narcotics or do not use narcotics. Here is the data:

Lembaga yang Memberikan Kegiatan Pencegahan Narkoba	Pakai Narkoba		Tidak Pakai Narkoba		Total	
	N	%	N	%	N	%
Badan Narkotika Nasional	83	76,90%	3.878	76,20%	3.961	76,20%
Badan Narkotika Nasional Provinsi	64	59,30%	3.092	60,70%	3.156	60,70%
Badan Narkotika Nasional Kota / Kab	63	58,30%	3.021	59,30%	3.084	59,30%
Dinas Kesehatan	57	52,80%	3.237	63,60%	3.294	63,30%
Kepolisian	68	63,00%	3.553	69,80%	3.621	69,60%
TNI	45	41,70%	1.965	38,60%	2.010	38,70%
Kantor wilayah Agama	25	23,10%	1.498	29,40%	1.523	29,30%
Dinas Sosial	40	37,00%	1.929	37,90%	1.969	37,90%
Dinas Tenaga Kerja	31	28,70%	1.527	30,00%	1.558	30,00%
LSM (Lembaga Swadaya Masyarakat)	41	38,00%	1.935	38,00%	1.976	38,00%
Rumah sakit / Pelayanan Kesehatan	54	50,00%	2.701	53,00%	2.755	53,00%
Organisasi Keagamaan (MUI, dll)	33	30,60%	1.910	37,50%	1.943	37,40%
Perusahaan	45	41,70%	1.964	38,60%	2.009	38,60%
Lainnya	1	3,70%	137	12,30%	138	12,10%

Source: Drug Abuse and Dark Circulation Survey, 2018

In accordance with Article 54 of Law Number 35 of 2009 concerning Narcotics, it is regulated that: Drug addicts and victims of drug abuse must undergo medical rehabilitation and social rehabilitation.[4] From these arrangements, every criminal offender must in principle undergo rehabilitation. Whether there is a crime or not, if the offender is a drug abuser, then the mandate of the law is carried out. The implementation of rehabilitation is spread in various places trusted by the National Narcotics Agency to carry out rehabilitation tasks, such as RSU/RSUD/Puskesmas/BNNP Primary Clinic, Lapas, Police Pusdik, Rindam, Suyoto Hospital, BNN Rehabilitation Center.

This rehabilitation arrangement is controversial among the military,[5] (members of the Indonesian National Army or Indonesian National Armed Forces soldiers) when applied to military drug abusers. On the one hand carrying out rehabilitation is in accordance with the law, on the other hand the military itself in accordance with the demands of its duties is

[4] Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, LN No.143 of 2009, TLN No.5062, Article 54.

[5] The use of the term military refers to membership in a military force. The term military is more widely used within the Indonesian National Army. Examples are Military Courts, Military Prosecutors, Military Law Colleges, etc. While the term army used to denote a soldier carrying a gun, it is now more widely used to denote a container. Examples are the Indonesian National Army, the Indonesian National Army, etc. But in other contexts the military is not only defined as a member of the Armed Forces, but includes other matters related to the armed forces. See S.R. Sianturi, Military Criminal Law in Indonesia, (Jakarta: Babinkum TNI, 2010), p. 2.

required to be free from the influence of drug abuse itself. As stated by the TNI Commander on the sidelines of the opening ceremony of the National Gashuku and Forki National Meeting at TNI Headquarters, Cilangkap, East Jakarta, on Saturday, February 27, 2016, that if he (the soldier) has been exposed to drugs, then he cannot become a TNI Soldier, additional punishment is fired. The sentence of the statement is a law enforcement order. On another occasion as Inspector of the Red and White Flag Raising Ceremony on April 18, 2016 at Cilangkap TNI Headquarters, the TNI Commander reminded that there should be no more TNI Soldiers or Civil Servants involved in drug cases. The TNI Commander also ordered that elements of the TNI leadership protect their soldiers and civil servants from drug crimes.[6] The military in accordance with Article 46 of the Military Criminal Code is regulated as follows:[7] What is meant by military is:

1st, Those who are bound for voluntary service to the Armed Forces, who are obliged to be in continuous service within the grace period of such bond;

2nd, All other volunteers in the Army and military shall, as often and as long as they are in service, as well as if they are out of actual service within a period of time during which they can be called up for service, to perform any of the acts formulated in articles 97, 99 and 139 of this Code.

The definition of military is contained in Article 1 Number 42 of Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice which refers to it as Soldiers of the Armed Forces of the Republic of Indonesia, as follows:[8]

Soldiers of the Armed Forces of the Republic of Indonesia, hereinafter referred to as Soldiers, are citizens who meet the requirements specified in the provisions of laws and regulations and are appointed by authorized officials to devote themselves to the defense of the country by bearing weapons, willing to sacrifice their lives and participate in national development and subject to military law.

That in Article 1 Number 20 of Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army, as follows: Military is the strength of the armed forces of a country regulated based on laws and regulations.[9] In addition, in Article 1 Number 1 of Law of the Republic of Indonesia Number 25 of 2014 concerning Military Discipline Law, as follows: Military is a member of a country's armed forces regulated based

[6] Mandate of the TNI Commander at the Red and White Flag Raising Ceremony on April 18, 2016.
[7] Indonesia, Law of the Republic of Indonesia Number 39 of 1947 concerning the Military Criminal Code, Staatsblad No.167 of 1934, article 46.
[8] Indonesia, Law of the Republic of Indonesia No. 31 of 1997 concerning Military Justice, LN No.84 of 1997, TLN No.3713, art. 1 number 42.
[9] Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army, LN No.127 of 2004, TLN No.4439, art. 1 number 20.

on the provisions of laws and regulations.[10] Therefore, the military is basically civilians who are qualified, educated and trained, and equipped with military capabilities and equipment and determined by authorized officials to serve in the army as a military continuously as long as they are still in the military. They are given more authority than the citizens of society in general, but are charged with special duties and responsibilities and rules (laws) that are specific to them, while being subject to generally accepted rules.

As a logical consequence of the military's specificity, the military must be tried in a separate court.[11] The court is a manifestation of justice and protection of military interests, as well as protection of legal interests and state interests, so that principles such as the principle of unity of command, the principle of the,[12] commander being responsible to his subordinates, the principle of military interests and the principles applicable in the general judicial environment also apply in the military justice environment.[13] And the procedural law used is guided by a systemic approach by integrating the conception of national criminal procedural law, namely Law Number 8 of 1981 concerning Criminal Procedure Law, State Gazette of the Republic of Indonesia of 1981, Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209 with various specificities of events derived from the principles and characteristics of the life system of the generation Armed. Therefore, military courts are given more authority than courts in general. Among them is the authority of military courts to dismiss military personnel from military service.[14] The standard for dismissing a military officer is whether or not the military deserves to continue serving in the military.

Dismissal from military service of drug abusers is a very important step because it takes into account the military's interest in maintaining compliance with the law, as explained earlier. Nevertheless, it is also necessary to consider medical rehabilitation of the offenders after dismissal. From a legal perspective, drug abusers are considered perpetrators of criminal acts and victims at the same time. They are considered criminal offenders because Law Number 35 of 2009 on Narcotics threatens them with imprisonment, which varies

[10] Law of the Republic of Indonesia Number 25 of 2014 concerning Military Discipline Law, LN No.257 of 2014, TLN No.5591, art. 1 number 1.
[11] Soegiri, et.al. , 30 Years of Development of Military Justice in the Republic of Indonesia, (Jakarta: Indra Djaja, 1976), p.6. See also Tiarsen Buaton, Military Justice in Judicial Power in Indonesia Its Position and Jurisdiction (Period 1945-2010), (Jakarta: Sari Ilmu Pratama, 2012), p.1.
[12] Law of the Republic of Indonesia No. 34 of 2004 concerning the Indonesian National Army, LN No.127 of 2004, TLN No. 4439, Article 64.
[13] Tiarsen Buaton, Military Justice in Judicial Power in Indonesia Its Position and Jurisdiction (Period 1945-2010), (Jakarta: Sari Ilmu Pratama, 2012), p.297.
[14] Law of the Republic of Indonesia Number 39 of 1947 concerning the Military Criminal Code, Article 6 letter b to 1.

depending on the type of narcotics used. However, in some situations, drug abusers are also seen as victims of drug trafficking who require medical rehabilitation and social rehabilitation. These two aspects must be considered in law enforcement in the TNI in order for punishment to achieve its goals. In practice, some TNI soldiers dismissed from military service for drug abuse do not undergo medical rehabilitation, so they return to society in inadequate conditions and are still dependent on narcotics. This is not in line with the current goals of penalties, which focus more on awareness, improvement, and re-prevention of criminal acts. They should be given the opportunity to be readmitted by society after recovering and become responsible citizens. TNI soldiers who are dismissed and left unattended after dismissal can pose a serious threat because they have special skills that can be exploited in illegal narcotics-related activities.

However, according to the author, the difficulties in implementing rehabilitation for TNI soldiers are:

1. The absence of evaluation from authorities such as the National Narcotics Agency (BNN) on TNI members involved in narcotics abuse should be carried out from the investigation stage to determine their level of dependence on narcotics.
2. The absence of regulations specifically regulating rehabilitation sanctions within the TNI is also an obstacle.
3. In addition, the TNI does not yet have a special institution to carry out rehabilitation, and there is no formal agreement or MoU between the TNI and the authorities in rehabilitation, so the Military Prosecutor faces difficulties in carrying out rehabilitation decisions.

The existence of military personnel involved in narcotics crimes, indirectly there has been a process of weakening state defense equipment in maintaining the sovereignty of the Unitary State of the Republic of Indonesia. The latest case of narcotics crime within the TNI is by TNI Soldiers who occurred in Kostrad housing, Tanah Kusir, South Jakarta. In another case, on April 6, 2016, Makassar Dandim individuals were caught in an operation led directly by Kasdam VII/Wirabuana.[15] This is a concern for the public in general about the guarantee of safety, defense and security of the country. These concerns are not without reason. Because it is the duty of the military to maintain the sovereignty of the country, including protecting citizens. It is conceivable how dangerous it would be if the military was equipped with the main means of weapon systems (defense equipment) but was not qualified to man them physically and mentally. This will be a threat to the integrity and sovereignty of the country, because in principle the defense equipment will be useful in building peace if it is in the right

[15] Dandim Makassar Caught in Raid, Kompas (April 7, 2016): 15.

hands and will be a destroyer of peace if it is in the wrong hands. Based on these problems, the author finally made the author interested in further pouring into this Dissertation.

II. LITERATURE REVIEW

In this study, the author used 3 theories. Namely the theory of punishment, the theory of economics of law and the theory of legal certainty.

Teori Economic of Law

Roscoe Pound's view of the theory of "social interest" which was the forerunner of the concept of "law as social engineering" that he presented at the Conference of the *"American Society of Sociology of Law"* in 1971 stated that "Viewed from a functional point of view, law is an attempt to match, to harmonize, to compromise a variety of overlapping or complex interests, ... in order to effect as many of the most important interests in our civilization as possible, at the least sacrifice to other interests... I dare to think about the problems of removing barriers and preventing waste in human enjoyment of the goods of existence, and about the legal system as a system of social engineering in which these goals are achieved." Pound's statement stated that the function of law is very broad, including reconciliation, harmonization, and compromise in overcoming conflicts of interest that exist in society, be it the interests of individuals, public interests, or the interests of the state. The guiding principle is to achieve as many of the most dominant interests in our civilization as possible, at the least possible sacrifice to other interests. This is what he referred to as law as social engineering or a system of social engineering. Based on Pound's statement, it is clear that the legal concept referred to by him is a future-oriented legal concept, with a clear vision of how to resolve various conflicts of interest in people's lives, and how the role of states and individuals in this process. Pound's statement was interpreted by Mochtar Kusumaatmadja in the context of national legal development in Indonesia, focusing on how law can be a tool to transform and renew society.[16]

Pound's opinion encouraged the development of a non-legal analysis of legal developments. One of the figures in the analysis of economics on law is Richard Posner, who uses an economic approach based on three principles, namely value, expediency, and efficiency. Later, Posner's economic analysis was continued by Robert Cooter and Thomas Ullen, with the principles of maximization, balance, and efficiency to the law.

According to Richard Posner, efficient law is the allocation of responsibilities between parties involved in interacting activities in such a way that common values or some common values can be maximized, while minimizing the costs of those shared activities. Efficient

[16] Romli Atmasasmita, Reconstructive Integrative Legal Theory Against Development Law Theory and Progressive Legal Theory, Second printing, (Yogyakarta: Genta Publishing, 2012), p. 40.

law enforcement focuses more on the quality of process control than on its quantitative effectiveness. Focusing on law enforcement targets can create bias in community development and can even be counterproductive and misleading to society.

The economic analysis approach to law is, philosophically, in line with the view that "law is for human beings, not the other way around." This means the law is a means to a specific end, not an end in itself. Economic analysis of laws bases itself on rational choice theory in which rational individuals can determine the best course of action to achieve their goals and benefit from those actions. Because individuals often have vested interests that can conflict with the interests of others, laws and norms are used to govern human behavior. In other words, rational choice theory makes economic analysis of law part of philosophy, especially philosophy of law.[17]

Economic analysis of law also involves the use of economic methods to analyze the rules and laws prevailing in a particular society. Using the theoretical framework of economic science, this analysis can identify human preferences and the legal consequences of such actions. In addition, this analysis makes it possible to make predictions about various possible outcomes of the application of a rule of law through the analysis of mathematical models and precise formulas. Thus, economic analysis of law provides a solid basis for scientific accountability in applying economic and legal theory in a broader legal context.[18]

The theory of economic analysis of law does have deep roots in utilitarianism. Utilitarianism itself is a view in which human beings strive rationally to achieve maximum satisfaction for themselves. However, utilitarianism has a drawback, namely its inability to determine exactly what the individual wants. This is the point at which economic analysis of the law provides an answer, namely by measuring a person's desire based on how willing he is to pay to get what he wants. In other words, how much they are willing to pay to satisfy their desires. This measurement can be in the form of money or the use of other resources they have, such as the time or effort they are willing to make. With this approach, economic analysis of the law concludes that everything can be reduced to a simple question, namely "how much must be paid for something to be obtained or vice versa, how much must be paid for something not to be obtained."[19]

Economic analysis of law is actually the result of collaboration between two fields of science, namely law and economics. In the academic perspective of law, it can be considered as the application of law in an efficient and rational way using economic concepts and theories. That way, these two fields complement each other where economics can be used

[17] Agus Darmawan, Perspective on Law as An Allocative System Law on the Financial Services Authority, Fiat Justisia Journal of Legal Sciences Volume 8 No. 3 2014, p. 403.
[18] Ibid. h. 404.
[19] H.L.A Hart, Hart's Postscript, Essays on the Postcript to the Concept of Law, (Oxford,1983), h. 143

as a tool to analyze existing legal issues. The hope is that with this approach, more efficient solutions can be found to legal problems.[20]

Economic analysis of law actually falls into the realm of legal philosophy, more precisely, in the category of "laws and values" of legal philosophy. It is a critical theory that is normative in nature as it deals with rational choice theory. In the process of analysis, individuals must use their rationality without compromising the values that exist in society. Although his inspiration is related to utilitarianism, economic analysis of law has evolved further and taken other elements from economics and legal philosophy to form a more comprehensive framework. It is the merging of economics and law that has given birth to a new approach in the understanding and regulation of law.[21]

III. METHODOLOGY

This study used a qualitative research approach. Qualitative analysis is used to analyze unique findings in research. The qualitative research approach that will be used is to use juridical-normative research, which is a research method that includes research on legal identification and legal events based on legal aspects of legislation and their application in the field.[22] The theme that the author takes in this study is about how to implement the ideal rehabilitation for TNI Soldiers who abuse narcotics, so that in his research he can review various mechanisms of the tantara rehabilitation system for drug abusers to find patterns of rehabilitation application in court decisions so that better rehabilitation policies can be formulated in the future.

IV. RESULT AND DISCUSSION

Concept and Application of Rehabilitation for TNI Soldiers who Commit Narcotics Crimes

Refers to thinking that is based on common sense, reason, reason, or sound logical thinking.[23] Instead, the word "legis" comes from the word "legal" or in accordance with legislation or law.[24] "Ratio legis" refers to the basis or reason for consideration required for a particular provision in a law or legal regulation. Joop Hage defines a rule as a formal statement that establishes a particular way or behavior.[25] The rules established by the

[20] Richard A Posner, Economic Analysis of Law, Edisi Keempat, (Little Brown and Company, 1992).
[21] Ibid.
[22] Mukti Fajar and Yulianto Achmad, Dualism of Empirical Normative legal research, Yogyakarta: Pustaka Siswa, 2007, p. 107.
[23] Ministry of Education and Culture, 1994, Op. Cit., p.820
[24] Sudarsono, 2012, Legal Dictionary, Rineka Cipta, Jakarta, p. 244
[25] Joop Hage as quoted by A'an effendi et al. 2016. Legal Theory. Jakarta : Sinar Grafika. p.161

authorities must be followed, and sanctions and unpleasant consequences will be given in case of non-compliance. The rule of law is normative, serves as a guideline or guide, and establishes obligations that must be obeyed. The normative nature of this law characterizes the prescriptive nature, which means stating what should exist or happen.

The understanding of "ratio legis" begins with searching for ontologies, that is, attempts to find the core contained in each legislation and explain reality in all its forms. [26] Ontology is the reason or purpose behind the formation of such laws. To understand "ratio legis," researchers need to do interpretation or interpretation when the text in the law is unclear. Thus, researchers will gain a deeper understanding of the purpose of these statutory provisions to answer the legal issues being studied.[27]

- The importance of dismissal and rehabilitation is regulated in the KUHPM

Military law began with the law of military discipline, which initially included only basic principles such as the prohibition against betraying colleagues and fleeing the battlefield (offenses considered criminal offenses for military personnel). As they developed, these rules also involved all aspects of troop life, giving army commanders broad authority over their members. In addition to organizing troops, commanders also have full power to command and prosecute hired members of the forces and their families.[28] Therefore, these regulations became a tool for commanders to control troops and regulate the behavior of the soldiers. The existing legal regulations were eventually incorporated into the common law, so that the commander's power was limited only to his soldiers and the authority to crack down on soldiers who violated the rules. The law under the power of the commander of the troops is known as the law of discipline, and the military criminal law becomes a form of sanction law because both sanction violators. The separation of the authority of the commander in granting disciplinary and criminal punishment occurred since the beginning of the XIX century.[29]

The history of military law in Indonesia also dates back to the time of the Dutch East Indies Government, which implemented the law in accordance with the principle of concordance. Initially, the law governing military law in the Dutch East Indies was the Crimineel Wetboek voor de militia van de Staat, which regulated military criminal law and military discipline law. However, the separation between military penal law and military disciplinary law

[26] Herowati Poesoko, 2018, Law in the Perspective of Philosophy of Science, LaksBang Pressindo, Yogyakarta, p.37
[27] Dyah Ochtorina, delivered in a Legal Research lecture material at the Faculty of Law, University of Jember
[28] ASS Tambunan. Op. Cit. hal. 65
[29] Dikutip ASS Tambunan dari Mr. FF Langemeijer, Nature Function of the Military Criminal Law. Zwolle, W.E.J. Tjeenk Willink. 1977. Hall. 17-18

occurred after the publication of Crimineel Wetboek voor het Krijgsvolk te Landed an Krijgstucht voor het Krijgsvolk te Lande in 1815.[30]

This separation has an impact on the authority of the commander in cases of disciplinary violations, where only the authority to impose disciplinary punishment (in this case known as Ankum / Superior Who Has the Right to Punish). Meanwhile, in criminal cases, the commander's position is determined in conducting investigations, temporary detention (his position as Ankum), extension of detention, submission of cases to court, settlement of cases in accordance with disciplinary law, and closing cases for legal and military purposes (in this case the commander acts as Papera / Case Submission Officer).

Military criminal law and military discipline law, in essence, have the same purpose, which is to protect and enforce military discipline. In the face of serious violations of military obligations, military criminal penalties are applied with more severe sanctions, while military discipline law provides lighter sanctions for lesser offenses. The line between the two cannot be drawn firmly, so the practical guideline is to draft a separate law book.[31]

Discipline enforcement is a major focus in law enforcement within the TNI, where military criminal punishment plays a role when soldier discipline is threatened or disrupted. The discipline of soldiers is strictly guarded because it is a condition for them to carry out their duties. Therefore, the application of disciplinary law and military criminal law aims to ensure that military units are free from violations of their soldiers. This means that there must be no violations within the TNI, and every violation, no matter how small, must be dealt with to prevent them from spreading and disrupting the performance of duties.[32]

Military life places discipline as the soul of the military, and in this context, ASS Tambunan states that military law serves to protect and support military discipline as a whole, enabling the TNI to carry out its duties and obligations effectively. Furthermore, SR Sianturi stated that the basic principles of Indonesian military law originate from the duties of the Indonesian military (TNI) and are part of the Indonesian national legal system. Overall, the function of military law is to ensure that the military can carry out its duties and obligations in accordance with laws and regulations.[33] In addition, the military penal code applies to the justiciability of military justice, regulates the grounds and regulations regarding prohibited and compulsory acts, and provides criminal threats for violations. Military criminal law also determines when and how offenders can be held accountable for their actions, as well as determining the process of prosecution, conviction, and criminal execution, all in order to

[30] Ibid. p.66
[31] Ibid. p. 91
[32] Ibid. p. 50
[33] SR Siants. Op.Cit. hal.9

achieve justice and legal order.[34] Overall, the KUHPM only regulates crimes and does not address violations. Any act that violates the provisions therein is considered a military crime, whether pure or not. The KUHPM became a separate code as a special criminal law applicable to the military, with the following considerations:[35]

Members of the armed forces are organized as a unit, united, and managed / maintained specifically because they are intended for arduous tasks that require unity of thought and action, so special criminal laws are needed. The impact of training and experience of a military, especially in combat among the military, produces a distinctive military-colored way of thinking and views that must be developed, such as loyalty to colleagues, a sense of responsibility, sacrificial courage, fighting spirit, and so on. Without that kind of way of thinking and viewing, they are really nothing more than a civilian dressed in military clothes with guns. This reality must be directed primarily through specific laws. Criminal threats in the general penal code are often considered inadequate or less severe for a military person committing a crime, although with the application of Article 52 of the Criminal Code sometimes a (additional) crime is required that differs from that specified in the Criminal Code (see Articles 140, 141, etc. of the KUHPM; Article 135 paragraphs (2) and (3) in relation to Articles 160 and 161 of the Criminal Code). All additions, subtractions, and/or deviations from the general provisions of the Criminal Code contained in the KUHPM are incorporated into the Criminal Code, thus confusing the structure of the Criminal Code more than simplifying it. Some acts that are more in the nature of violations of military life contained in the KUHPM are included in the KUHDM (military discipline code), which will expand the authority of Ankum and at the same time increase the burden on Ankum, so that it will equate criminal acts with disciplinary violations.

By understanding the history of military law and the views of experts in the field, we can find out the basis of the dismissal rules in the KUHPM, which are stipulated in Article 6 of the KUHPM on the penal system and are included in additional crimes. This type of crime is unique to the military and does not exist in civilian law. The norms for criminal conviction are explained in Article 26 of the KUHPM and serve as a guide for judges in making decisions.[36] The article stipulates that dismissal can only be imposed simultaneously with the death penalty or imprisonment on the basis of crimes that make members of the military unfit to be retained. The author argues that such crimes should be considered severe among the military because they can damage the honor of soldiers or units.

[34] Ibid. p. 18
[35] SR Sianturi. On. Cit. hall. 53-54.
[36] Austin Chinchengo. 2000. Essential Jurisprudence, second edition. London & Sydney : Cavendish Publishing Limited. hal. 8

Furthermore, provisions based on the type of crime are seen as the norm for removing military members from service if deemed inappropriate.[37] The conclusion of Article 26 of the KUHPM is that the norm for the dismissal of soldiers is their unworthiness to remain in military service, coupled with rehabilitation for drug abusers. Hans Kelsen states that norms can include orders, granting authority, and granting permission, especially norms that grant authority. This article provides norms for judges to impose sanctions of dismissal. Thus, there are two norms identified by the author: first, dismissal can only be imposed simultaneously with rehabilitation, the death penalty or imprisonment, and secondly, the basis of the crime judges that the offender has lost his military properties and undermined the unity and order in the military. While the first element can easily be the basis for judges to impose sanctions of dismissal and rehabilitation, the second element contains the distinction in that the rules do not provide concrete criteria on the types of crimes that can trigger dismissal as well as rehabilitation. This gives full confidence to the judge to make judgments. In comparison, military justice manuals specify situations in which dismissal and rehabilitation should be enforced, such as serious violations of civilian or military law that require severe punishment.

The problem arises in the lack of clarity as to what crimes can lead to dismissal and rehabilitation obligations, except in cases of death penalty or imprisonment. According to the authors, if the KUHPM has qualified the type of crime, its implementation will be easier. Some countries, such as America, have clear rules about dismissal and also rehabilitation in cases of drug abuse. Dismissal and rehabilitation in this case are considered criminal sanctions imposed through military courts, deemed necessary to preserve the honor and qualifications of soldiers. The criteria of unworthiness used generally involve non-compliance with soldier standards, such as loyalty, obedience, and discipline.

The authority of military judges in dismissal and rehabilitation is to impose sanctions as a punishment for crimes committed by soldiers, while the authority to remove from service is exercised by administrative officials after the judge's decision. This resulted in soldiers losing their TNI status and returning to civilian status but still being obliged to carry out rehabilitation.

The judge's decision that lists Article 26 of the KUHPM as a basis and consideration raises questions. According to Imron Anwari, a military judge, the article is not the basis for proving the elements of a criminal offence, but rather the mutatis mutandis provision that judges should use to hand down dismissals.[38]

[37] Quoted by A'An Efendi et al in Legal Theory. Op. Cit. p. 57

[38] H. Imron Anwari, SH, Spn, Mkn. 2012. Additional Criminal Convictions Dismissal of TNI Soldiers from Military Service and Their Consequences. Rakernas 2012 Manado: Supreme Court with the Court of Appeal throughout Indonesia.

Dismissal and rehabilitation as additional crimes in addition to the principal crime are considered a heavy burden for soldiers to the detriment of the military unit and community, because they are no longer considered fit to remain in military service. This decision was based on the loss of military traits such as discipline, loyalty, and obedience. The military justice system differs from the general judiciary in that it involves the role of unit commanders in investigations and detentions, although the final decision rests with military judges. Although the judge handed down the verdict, the administration of the dismissal must follow, and this can take time.

In practice, there are still problems due to differences in views between unit commanders and judges in assessing their members' cases. This difference arises because the unit commander, as an element of command under the TNI Commander, must comply with the leadership's policy which requires strict action against members proven to have committed drug abuse, including dismissal and rehabilitation. On the other hand, the judge follows the principle of independence and should not intervene, so his decision should be recognized as correct. Additional crimes are often not based on the judgment and evidence at trial, but rather on the judge's personal conviction of a case. Additional criminal characteristics are optional, giving judges the freedom to apply them or not. Unit commanders want court rulings upholding dismissal and rehabilitation for members convicted of drug abuse to have grounds for administrative dismissal. Another problem is that unit commanders or Ankum do not have the authority to carry out the execution of dismissal and rehabilitation decisions by courts from military service. Law No. 31 of 1997 on Military Justice confirms that Ankum's authority is limited to imposing disciplinary punishment and conducting investigations into violations committed by Soldiers under the authority of its command. Although additional criminal convictions are theoretically carried out together with principal criminal convictions by one institution, namely military courts, they are in fact carried out by two institutions that have different powers, namely the Military Prosecutor and the Ankum. This situation reflects a discrepancy between the desired rule of law (das sollen) and the reality of the field (das sein). Its implementation is considered to have not provided legal certainty, so it is considered inefficient, effective, and accountable, and therefore, it is necessary to establish principles to ensure justice for the military community.

The TNI organization was established to support the achievement of national interests for the sustainability of the Unitary State of the Republic of Indonesia (NKRI) based on Pancasila and the 1945 Constitution. The main task of the TNI is to protect the state and nation from any threat to state sovereignty and maintain the territorial integrity of the Republic of Indonesia. The TNI must be a state institution with a strong and loyal organization, reflecting the character of chivalry by following the values in the Soldier's Oath, Sapta Marga, 8 Mandatory TNI, and 11 Principles of TNI Leadership. These

principles create unique characteristics of TNI soldiers, who are faithful, loyal to the Republic of Indonesia, moral, subject to laws and regulations, disciplined, obedient to superiors, and responsible in carrying out their obligations as soldiers.

The TNI organization must be filled by individuals who have strong character to maintain the sovereignty of the Republic of Indonesia, defend territory, and protect the Indonesian nation.[39] Although every Indonesian citizen (WNI) is given the opportunity to become a TNI Soldier, they must meet the requirements set by the TNI Law and organization, including having faith in God, being loyal to Pancasila and the 1945 Constitution, being free from criminal records, being physically and mentally healthy, not losing the right to become a TNI Soldier, passing the First Education, and fulfilling other requirements as needed.[40] Indonesian citizens who do not meet these requirements cannot be accepted as TNI soldiers. However, after becoming TNI soldiers, if their character does not conform to the values of the soldier, the Soldier's Oath, the Sapta Marga, and the eight Mandatory TNI, they can be dismissed either through military courts or administratively. Legal practice in Indonesia asserts that the law is applied equally to all citizens without distinguishing between civilian and military. Nevertheless, in practice, there are differences in the treatment of the two groups.

The duties of the TNI require special requirements in order to carry out its obligations. The main requirement is a compact, orderly, and disciplined unity, always ready and ready whenever the country needs. All these obligations are reflected in discipline, that is, the devotion of his body and soul to the duty of duty of the soldier, based on the belief that that this is what should be done, as well as in the attitude of obedience and respect for superiors, which is the source of military obligations.[41] The TNI is placed as the main component in the country's defense system to deal with military threats, while components outside the TNI are supportive. To realize the TNI as a force that has deterrent capabilities in accordance with the country's defense policy, human resource development is a determining factor in creating a professional TNI. Human resource development builds soldiers who are able to carry out the task of state defense as a state defense right and profession. Soldiers are a unique profession, incomparable to other occupations because they are always ready to face threats to the country at any time and wherever they come from. Therefore, the legal logic

[39] See Article 7 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Army. State Gazette of the Republic of Indonesia Year 2004 Number 127. Supplement to the State Gazette of the Republic of Indonesia Number 4439

[40] ASS Tambunan. 2005. Indonesian Military Law: An Introduction. Jakarta : Center for Military Law Studies College of Military Law.p.89

[41] Deputy TNI Commander Number Kep 555/2018 dated June 6, 2018 concerning the Doctrine of the TNI Tri Dharma Eka Karma, p. 10.

used to establish the norm of being in the military is to ensure that they meet certain physical and spiritual requirements. [42] Therefore, according to the author, the rules related to dismissal and rehabilitation should be regulated clearly and clearly in the KUHPM from the beginning of the process until after the TNI member concerned undergoes rehabilitation at a state- determined institution.

The legal basis for dismissal from military service is stipulated in Article 26 of the Indonesian Civil Code, while rehabilitation is not specifically found. The formulation of Article 26 of the KUHPM is almost similar to the Criminal Code, especially Article 35 paragraph (1) 1st and 2nd. The difference lies in the KUHPM which presents one formulation, while the Criminal Code describes it in two sub-paragraphs. This difference is significant; Article 35 of the Criminal Code is related to Articles 36 and 38 of the Criminal Code, regarding the deprivation of the right to hold office or the right to join the Armed Forces. This can only be done in the context of conviction for a specific crime, and the judge must determine the length of that revocation. Instead, the KUHPM waives those two conditions, allowing deprivation of rights for every crime and without a stipulation, even for life.

The Penal Code provides that if the length of revocation is not specified, the judgment is considered void or at least applied erroneously. The KUHPM is based on the idea that an ex-convict can return to society within a certain amount of time. It rejects the view that society should "educate" the individual, so that he or she can return to military service with good behavior.[43]

The provisions of the Criminal Code recognize the existence of special rules regarding the authority of the ruler to impose administrative dismissal, where the judge is not authorized. However, in the penal system of the KUHPM, this provision can be ignored. The judge who has the authority to impose an additional penalty of dismissal from military service is a military judge. The term "may be assigned by a judge on any ruling" refers to a military judge, so civilian judges cannot impose additional penalties peculiar to the military. Although in cases of "connection," where a military person commits a common criminal offense, a civilian judge can convict him, but is not authorized to impose an additional penalty of dismissal from military service.[44] And specifically related to narcotics, there are additional sanctions, namely in the form of rehabilitation. The decision of dismissal by military judges is based not only on crimes regulated in the KUHPM, but also on general or

[42] ASS Tambunan, 2005, Indonesian Military Law An Introduction, Center for Military Law Studies, College of Military Law, Jakarta, p.79
[43] SR Sianturi. On. Cit. Chapters 96-97
[44] Ibid. pp. 97-98

military crimes punishable by death or imprisonment.[45] If a soldier is tried in connection and sentenced by a civilian judge, the additional crime of deprivation of the right to hold military office (dismissal from military office) may be imposed, but it must be in accordance with the provisions of the Criminal Code, such as determining the length of disenfranchisement. If civilian judges do not impose such additional penalties, even though the military leadership considers it necessary for dismissal, there are other options through legislation, not as criminal but as administrative or disciplinary punishments. In the TNI Soldier Administration,[46] dishonorable dismissal of officers is carried out after considering the opinion of the Officer Honor Council, while non-commissioned officers and enlisted officers are carried out after considering staff suggestions on a tiered basis. In the Military Discipline Law, a military person who is sentenced to Military Discipline more than 3 times in the same rank,[47] and is considered unfit to be retained to remain in military service, is discharged not honorably.[48]

The measure for imposing an additional crime of dismissal from military service, in addition to the principal crime, is the result of a military judge's research into crimes committed by a defendant or convict. The term "unfit" indicates that the convicted military has no or very lacking the qualities that a military person should have. This does not refer to defensible prowess, but rather to attitudes inappropriate for a military person. Unworthiness, as described in Article 26 paragraph (1) of the KUHPM, can be measured from the number and weight of crimes committed by the accused or convicts. The number of crimes, both in the form of concursus and recidiv, can be taken into consideration. Although the crimes committed may not be serious crimes, frequent criminal offenses can make him considered unfit as a soldier. In addition, the weight of the crime in terms of quality, even if it is committed once, can be grounds for dismissal if it is considered severe. Other considerations include the repeated disciplinary punishment received by the military.

The trust given to military judges is a warning that dismissal and rehabilitation must have a meaning that includes or implies that the presence of the convict in the military community after serving his sentence will disturb order. Regarding the length of imprisonment as a condition for adding dismissal, Sianturi51 [49]argued that exceeding 3 months is the minimum

[45] In accordance with Article 2 of the KHPM that a military person is also subject to the articles of general criminal offenses

[46] See the provisions of Article 53 of Government Regulation Number 39 of 2010 concerning the Administration of Indonesian National Army Soldiers

[47] Article 12 paragraph (1) of the Law on Military Discipline Law Number 25 of 2015 concerning Military Discipline Law

[48] Article 33 of Commander-in-Chief Regulation Number 44 of 2015 concerning Military Discipline Regulations.

[49] SR Sianturi, Op. Cit. hal. 98-99

limit. This is based on the judge's ability to impose a sentence of confinement, which indicates a relatively minor crime if the prison sentence is 3 months or less. In addition, the administrative law states that dismissal can be applied if a person is sentenced to imprisonment for more than 3 months.52 While special rehabilitation for drug abusers.[50]

Dismissal from military service imposed by a judge is actually part of a criminal sanction, although the law does not specify the criminal act on which this sanction is based. This is in contrast to administrative law where dishonorable dismissal is considered a punishment. Government Regulation Nomor 39 of 2010 provides criteria for dismissal, including additional criminal dismissal based on a court decision that has obtained permanent legal force or behavior that is detrimental to military or TNI discipline.[51]

In the context of soldiers sanctioned with dismissal and rehabilitation, Article 26 paragraph (2) of the KUHPM stipulates the consequences of dismissal decided by a judge. The article expressly states that the legal effect of dismissal is the loss of all rights acquired in the course of service, except for pension rights which will only be lost in certain circumstances provided for by the pension regulations applicable to the convict. The next paragraph, paragraph (3), makes it clear that dismissal accompanied by deprivation of the right to join the Armed Forces will result in the loss of the right to possess and wear honors, stars, medallions, or identification obtained in connection with previous military service. In addition, the implication of the imposition of rehabilitation is that every former member of the TNI must undergo rehabilitation in a place determined by the government within a certain period of time until the person is no longer dependent / addicted to narcotics.

Speaking of honor, honors for military personnel are divided into two types, namely Bintang and Satyalancana. Military Star includes several types such as Guerrilla Star, Sakti Star, Dharma Star, Yudha Dharma Star, Kartika Eka Paksi Star, Jalasena Star, and Swa Bhuwana Paksa Star. While military Satyalancana includes Bhakti, Exemplary, Loyalty, Dharma Bantala, Dharma Samudra, Dharma Dirgantara, Wira Nusa, Wira Dharma, Wira Siaga, and Ksatria Yudha. In addition, there are also Merits in the form of Medals, such as the Pioneer Medal, the Glory Medal, and the Peace Medal.[52]

Dismissal from military service based on a court decision that has obtained legal force will still be followed by administrative proceedings or the issuance of a decision to dismiss the soldier. This has an impact on not being given post-service treatment, such as losing pension rights. However, other rights can still be maintained, including the right to receive cash value

[50] SR Sianturi, Op. Cit, hal. 96
[51] SR Sianturi, Military Criminal Law in Indonesia, Indonesian Army Legal Development Agency, 2010, p.96
[52] See article 7 of Government Regulation of the Republic of Indonesia Number 35 of 2010 concerning the Implementation of Law Number 20 of 2009 concerning Titles, Merits, and Honors.

from Soldier insurance and pension fund contributions in accordance with applicable regulations.

In practice, as stipulated in the Regulation of the TNI Commander Number Perpang / 15 / III / 2009 dated March 24, 2009 concerning Technical Guidelines for Termination of Military Service of the Indonesian National Army, it is explained that dishonorable dismissal is the end of a soldier's military service upon the decision of an authorized official for certain reasons. As a result, the soldier will not get post-service treatment, except for getting insurance cash value from ASABRI and return of savings from BP TWP.

The time of entry into force of dismissal and rehabilitation according to law is after the decision has obtained permanent legal force (in kracht van gewijsde zaak). Because, in a verdict that has not obtained permanent legal force, there is still an opportunity for the defendant to file an appeal and cassation. Article 29 of the Indonesian Civil Code confirms that although the judgment has permanent legal force, its effective enforcement does not occur when the judgment is pronounced, but when the judgment can be implemented.[53]

The implementation of dismissal and rehabilitation from military service that has obtained permanent legal force so far is still followed by an administrative process to issue a definitive decision from the authorized official. Therefore, the validity period of dismissal is regulated in the administrative aspect which explains that dishonorable dismissal (PDTH) of a soldier comes into effect from the moment the court decision has permanent legal force, starting from the end of the month when determined by the authorized official, and also starting from the date of death of the soldier concerned as a result of or in committing a crime, or suicide to avoid investigation, lawsuits, or assigned duty responsibilities.[54]

A convict sentenced to dismissal and rehabilitation, according to law (ipso jure), will be detained first. This principle is similar to the provisions in the Clemency Act, where a dangerous criminal who appeals for clemency remains detained even though the crime is not carried out on his own appeal. During the detention period, convicts are not allowed to interact with other military personnel.[55]

Thus, the punishment of dismissal for military members involved in drug abuse aims to protect military interests by maintaining discipline and order in military life. This is in accordance with the function of law, which is to protect the interests of society to create an orderly, orderly, safe, and peaceful order. If order, security, and peace are achieved, the objectives of the law are considered fulfilled. Romli Atmasasmita stated that order is the

[53] See the provisions of Article 75 paragraph (1) of Government Regulation Number 39 of 2010 concerning the Administration of Indonesian National Army Soldiers, p. 100.
[54] Decree of the Chief of Army Staff Number Kep / 484 / IX / 2014 dated September 19, 2014 concerning Technical Guidelines on Termination of Military Service.
[55] Ibid, p. 100

closest goal of law compared to justice, expediency, and legal certainty.[56] Therefore, the TNI Commander's Policy to impose dismissal and rehabilitation of drug abusing soldiers can be justified because it prioritizes the interests of the TNI in carrying out national defense duties. The threat of dismissal and rehabilitation is aimed at preventing violations related to drug abuse and maintaining soldier discipline. The interests of the TNI are related to the implementation of the country's defense duties and policies to ward off threats. The actions of unscrupulous soldiers who abuse drugs are considered to damage discipline and hinder the implementation of military duties so that dismissal and rehabilitation are aimed at preventing drug-related violations, protecting the interests of the TNI in order to carry out their duties and guarding national interests.

V. CONCLUSION

Retaining abusers can harm the image and good name of the TNI, reduce public trust, and not meet military moral and disciplinary standards. With rehabilitation, it also makes the image of the TNI better because it still cares about its former members even though they are no longer accepted into the TNI. In the context of military interests, which should take precedence over individual interests, soldiers must exercise military discipline well. These interests involve protecting discipline, maintaining order, and supporting the proper performance of military duties. Sanctions of dismissal and rehabilitation can be seen as measures that protect discipline and morale within the military unit as well as for former members when returning to society.

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