



## Judicial Consistency and Sentencing Disparity in Military Narcotics Cases: Evidence from Indonesian Military Courts

Dhini Aryanti\*<sup>1</sup>, Ismail Koto<sup>2</sup>

<sup>1,2</sup> Master of Law, Graduate School of the University of Muhammadiyah North Sumatra, Indonesia

\*Corresponding Author: [dhiniaryanti@gmail.com](mailto:dhiniaryanti@gmail.com)

**Abstract:** Narcotics abuse is one of the serious violations as stated in the Telegram Letter of the Commander of the Indonesian Armed Forces Number ST/398/2009 dated July 22, 2009 and the Telegram Letter of the Commander of Kodam I/Bukit Barisan Number STR/25/2007 dated January 27, 2007 and is a criminal offense regulated in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics article 127 Paragraph (1) letter a, has a bad effect and can damage the discipline of soldiers in their units so that it can affect the implementation of their main duties as TNI Soldiers is also contrary to the government's program which is currently intensively eradicating illicit circulation and narcotics abuse. This study aims to analyze juridically the comparison between Supreme Court Decision Number 98 K/Mil/2025 and Decision Number 391 K/Mil/2024, with a focus on the regulation of Military Criminal Law, differences in the application of law, judges' considerations, and its implications for the consistency of criminal law enforcement within the Military Court. The method used is a normative approach with a comparative method, using secondary data in the form of laws and regulations, court decisions, and related literature. The results of the study showed that there was a disparity in sanctions even though the type of criminal acts committed were the same, where the factors of the defendant's role when consuming narcotics, how many times the defendant had consumed narcotics, the adverse influence on discipline and the implementation of duties in the unit, and the judge's moral considerations were the main differentiators. The conclusion of the study

Received: April 4, 2026	Accepted: May 31, 2026	Published: June 01, 2026
-------------------------	------------------------	--------------------------

To Cite this Article: Aryanti, Dhini, and Ismail Koto. "Judicial Consistency and Sentencing Disparity in Military Narcotics Cases: Evidence from Indonesian Military Courts". *Abdurrauf Law and Sharia* 3 no 1 (2026):211-237 <https://doi.org/10.70742/arlash.v3i1.1025>



Copyright © 2026 by Author(s)  
 This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License

emphasizes the need for standard guidelines within the Military Justice to ensure legal certainty and a sense of justice for all TNI Soldiers.

**Keywords:** Narcotics abuse, Military Justice, Judicial Analysis, Comparison of Decisions.

**Abstrak:** Penyalahgunaan narkoba merupakan salah satu pelanggaran berat sebagaimana ditegaskan dalam Surat Telegram Panglima Tentara Nasional Indonesia Nomor ST/398/2009 tanggal 22 Juli 2009 dan Surat Telegram Panglima Kodam I/Bukit Barisan Nomor STR/25/2007 tanggal 27 Januari 2007. Selain itu, perbuatan tersebut merupakan tindak pidana yang diatur dalam Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 tentang Narkotika, khususnya Pasal 127 ayat (1) huruf a. Penyalahgunaan narkoba berdampak buruk terhadap disiplin prajurit di satuan, sehingga dapat memengaruhi pelaksanaan tugas pokok sebagai prajurit TNI. Perbuatan tersebut juga bertentangan dengan program pemerintah yang saat ini secara intensif melakukan pemberantasan peredaran gelap dan penyalahgunaan narkoba. Penelitian ini bertujuan untuk menganalisis secara yuridis perbandingan antara Putusan Mahkamah Agung Nomor 98 K/Mil/2025 dan Putusan Nomor 391 K/Mil/2024, dengan fokus pada pengaturan hukum pidana militer, perbedaan penerapan hukum, pertimbangan hakim, serta implikasinya terhadap konsistensi penegakan hukum pidana di lingkungan Peradilan Militer. Metode yang digunakan adalah pendekatan normatif dengan metode perbandingan, menggunakan data sekunder berupa peraturan perundang-undangan, putusan pengadilan, dan literatur yang relevan. Hasil penelitian menunjukkan adanya disparitas pemidanaan meskipun jenis tindak pidana yang dilakukan sama. Faktor-faktor yang menjadi pembeda utama meliputi peran terdakwa dalam penggunaan narkoba, frekuensi penggunaan narkoba oleh terdakwa, pengaruh negatif terhadap disiplin dan pelaksanaan tugas di satuan, serta pertimbangan moral hakim. Kesimpulan penelitian menegaskan perlunya pedoman yang lebih terstandarisasi dalam sistem Peradilan Militer guna menjamin kepastian hukum dan mewujudkan rasa keadilan bagi seluruh prajurit TNI.

**Kata Kunci:** Penyalahgunaan Narkoba, Peradilan Militer, Analisis Yuridis, Perbandingan Putusan.

## Introduction

Narcotics abuse has emerged as a global public health and security crisis, affecting state institutions, including armed forces worldwide. The United Nations Office on Drugs and Crime (UNODC) estimated that approximately 296 million people used drugs globally in 2021, a 23 percent increase over the previous decade. Within military institutions, narcotics abuse poses unique threats to operational readiness, unit cohesion, and institutional integrity.

Comparative studies across multiple jurisdictions reveal that military personnel are not immune to substance abuse disorders, and the manner in which military justice systems respond to such offenses carries profound implications for both institutional discipline and individual rights.

In Indonesia, narcotics abuse committed by members of the Indonesian National Armed Forces (TNI) constitutes a dual violation, namely a criminal offense under Law Number 35 of 2009 concerning Narcotics and a serious breach of military discipline pursuant to the Commander of the Indonesian National Armed Forces Telegram Letter Number ST/398/2009. Within the military justice system, narcotics abuse is not merely treated as an ordinary criminal act but is also regarded as conduct undermining military discipline, professionalism, and institutional integrity. Nevertheless, a significant legal problem arises in the form of sentencing disparity within Military Courts, where soldiers convicted of substantially similar offenses, particularly self-abuse of Category I narcotics under Article 127 paragraph (1)(a), receive markedly different sanctions despite comparable factual circumstances. Such disparity raises concerns regarding consistency, proportionality, and legal certainty in military criminal adjudication. Existing studies on narcotics sentencing in Indonesia demonstrate that disparities frequently emerge due to broad judicial discretion, the absence of standardized sentencing guidelines, and inconsistent judicial interpretations in narcotics cases. Consequently, sentencing inconsistency in military courts generates broader questions concerning the coherence, predictability, and fairness of military criminal law enforcement in Indonesia.<sup>1</sup>

The urgency of addressing this disparity is underscored by its implications for the rule of law within the TNI. When similarly situated defendants receive substantially different punishments, the principles of legal certainty (*rechtssicherheit*) and equality before the law are compromised. This not only undermines individual soldiers' trust in the military justice system, but also

---

<sup>1</sup> Retno Sella Trianingsih, "JURIDICAL ANALYSIS OF THE DISPARITY OF JUDGES' DECISIONS TO DRUG OFFENDERS IN THE SAME CASE (CASE STUDY OF EAST JAKARTA DISTRICT COURT DECISION NUMBER 334/PID.SUS/2022/PN.JKT.TIM, 335/PID.SUS/2022/PN.JKT.TIM, 336/PID.SUS/2022/PN.JKT.TIM, 337/PID.SUS/2022," *Journal Equitable* 9, no. 2 (2024), <https://doi.org/https://doi.org/10.37859/jeq.v9i2.6751>.

erodes public confidence in the TNI's institutional integrity. As Fidell has argued, military justice systems must balance the imperatives of operational discipline with the fundamental due process rights of service personnel.<sup>2</sup>

State Defense is the main component in the state defense system to protect the entire nation and all Indonesian bloodshed, promote public welfare, educate the nation's life, and participate in implementing a world order based on independence, lasting peace, and social justice, as mandated in the Preamble to the Constitution of the Republic of Indonesia in 1945. This effort is carried out through a strategy that involves all components of the nation, with the Indonesian National Army (TNI) as the main force and the people as the supporting force. Law Number 3 of 2002 on State Defense emphasizes that state defense includes all planned, integrated, and sustainable efforts to face threats to the nation's sovereignty and integrity.<sup>3</sup> In this case, the TNI plays a vital role, not only through the readiness of defense equipment, but also through the quality of discipline, integrity of every soldier and obedience to all applicable regulations.<sup>4</sup>

A key conceptual foundation of this study is the principle of *lex specialis derogat legi generali*, which governs the relationship between general and specialized legal regimes. In the Indonesian criminal justice system, the Military Criminal Code (KUHPM) functions as a *lex specialis* governing military personnel, whereas Law Number 35 of 2009 concerning Narcotics serves as a specialized legal framework for narcotics-related offenses. Consequently, when a member of the Indonesian National Armed Forces (TNI) commits narcotics abuse, the legal response involves an overlap between military criminal law and narcotics legislation, each regulating different normative dimensions of the conduct. In practice, Indonesian military courts tend to apply a layered approach in which the Narcotics Law governs the substantive criminal offense, while the Military Criminal Code provides military-specific consequences, including additional sanctions related to military status and discipline, such as

---

<sup>2</sup> Brian D. Johnson. Breen, Patricia D., "Military Justice: Case Processing and Sentencing Decisions in America's 'Other' Criminal Courts," *Justice Quarterly* 35, no. 4 (2018), <https://doi.org/https://doi.org/10.1080/07418825.2017.1335763>.

<sup>3</sup> Republik Indonesia, "Undang-Undang Nomor 3 Tahun 2002 Tentang Pertahanan" (2002).

<sup>4</sup> Maswandi, "Competence of Military Justice in Criminal Disputes of Servicemen," *IAML Journal* 4, no. 3 (2025), <https://doi.org/https://doi.org/10.59712/iaml.v4i3.140>.

dismissal from service under Article 26 KUHPM. Comparative scholarship on military justice suggests that systems combining ordinary criminal law with military-specific disciplinary objectives frequently generate broad interpretive discretion in sentencing and sanctioning practices. The coexistence of overlapping legal regimes, particularly in the absence of detailed sentencing guidelines, may contribute to inconsistent punishment outcomes and reduced predictability in judicial decision-making.<sup>5</sup>

A review of existing literature reveals three clusters of scholarship relevant to this study. First, comparative military justice studies have documented sentencing disparities across jurisdictions, emphasizing the tension between command authority and judicial independence. Adegbite's analysis of Nigerian military justice highlighted how the absence of structured sentencing guidelines enables arbitrary judicial discretion. Second, Indonesian legal scholarship on military courts has focused primarily on jurisdictional competence and procedural fairness, with limited attention to substantive sentencing consistency. The competence of military tribunals in Indonesia but did not address disparity in sanction imposition. Third, rehabilitation-focused literature, including Salam's study on narcotics rehabilitation for military personnel, has begun to challenge the punitive-only approach of military courts.

The research gap is clear: no existing study has conducted a systematic comparative analysis of specific Supreme Court military decisions to identify the exact factors driving sentencing disparity in narcotics cases involving TNI soldiers. This study addresses that gap by comparing Decision Number 98 K/Mil/2025 and Decision Number 391 K/Mil/2024 through both a doctrinal analysis of applicable law and a theoretical framework grounded in legal certainty and justice theory.

A further complexity arises from the human rights dimension of military criminal sentencing. International standards, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention, affirm that the right to fair trial and proportionate punishment applies equally to military personnel. The European Court of Human Rights has consistently held that military courts must comply with Article 6 of the European

---

<sup>5</sup> Igor Zgoliński, "Military Criminal Law As One Element Of Security," *Politics & Security* 10, no. 4 (2024), <https://doi.org/https://doi.org/10.54658/ps.39384210.2024.10.4.pp.67-76>.

Convention on Human Rights, which guarantees the right to a fair trial. In the Indonesian context, while the Constitutional Court has recognized the TNI's special status, the principle that punishment must be proportionate and non-arbitrary remains constitutionally protected under Article 28D of the 1945 Constitution.<sup>6</sup>

The Indonesian National Army (TNI) is a submissive Indonesian citizen and has the same position in the eyes of the law. One of the efforts to uphold justice, truth, order, and legal certainty is through the Military Court as referred to in Law Number 14 of 1970 concerning the Principal Provisions of Judicial Power.<sup>7</sup>

The Military Justice in Indonesia is a special judicial institution established to enforce law and discipline within the TNI. The existence of the Military Court is regulated in Law Number 31 of 1997 concerning Military Courts, which gives the authority to prosecute members of the TNI who commit criminal acts, both military and general crimes by paying attention to the interests of the implementation of defense and national security.<sup>8</sup> As a *lex specialis*, the Military Courts have different examination and sentencing procedures than the General Courts, involving special law enforcement officers such as the Military Police, Military Inspectors and Military Judges.<sup>9</sup>

Narcotics abuse for oneself as regulated in Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics is a criminal act that occurs when a person without the right and permission of the authorized official consumes narcotics. The use of narcotic substances is only allowed for medical purposes in accordance with the supervision of a doctor and also for research purposes.<sup>10</sup>

---

<sup>6</sup> Lucy Harry Hoyle, Carolyn, "Diversion or Death? The Moral Framework Shaping Bifurcated Punishments for Drug Offences in Indonesia," *Drugs: Education, Prevention and Policy* 32, no. 4 (2025), <https://doi.org/https://doi.org/10.1080/09687637.2024.2402262>.

<sup>7</sup> Republik Indonesia, "Undang-Undang Nomor 14 Tahun 1970 Tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman" (1970).

<sup>8</sup> Republik Indonesia, "Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer" (1997).

<sup>9</sup> Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2012).

<sup>10</sup> Humas BNN, "Pengertian Narkoba Dan Bahaya Narkoba Bagi Kesehatan," BNN RI, n.d., <https://bnn.go.id/pengertian-narkoba-dan-bahaya-narkoba-bagi->



an influence on public and internal trust in the Military in the objectivity of the judiciary. Therefore, there is a need for clear and standardized sentencing guidelines, as well as improving the quality of Military Judges in assessing the proportionality of the imposition of criminal sanctions based on juridical, sociological, moral and military interests.<sup>14</sup>

The theoretical contribution of this study lies in demonstrating how Rawlsian justice theory and Apeldoorn's legal certainty doctrine, when applied as an integrated analytical framework rather than mere rhetorical flourishes can diagnose structural deficiencies in military justice systems. Specifically, this study argues that sentencing disparity violates both the Rawlsian difference principle (inequalities are only justified if they benefit the least advantaged) and Apeldoorn's requirement that law must be determinable and predictable.

## Method

This study uses normative legal research methods with a statutory approach and comparative methods. The legislative approach is used to examine the positive legal provisions that govern the Military Tribunal, especially Law Number 31 of 1997 concerning Military Justice, the Criminal Code (KUHP), the Military Criminal Code (KUHPM), and the Criminal Procedure Code (KUHAP). A comparative method was used to analyze the Decision of the Supreme Court of the Republic of Indonesia Number 98 K/Mil/2025 with Decision Number 391 K/Mil/2024. The type of data used is secondary data which includes primary legal materials and secondary legal materials. Primary legal materials include laws and regulations and court decisions; Meanwhile, secondary legal materials are in the form of legal literature, books, and scientific journals. The data collection technique is carried out through library research by examining legal documents and related literature. Data analysis is carried out qualitatively by interpreting legal provisions, comparing them with the judge's decision, and relating them to relevant legal theories and principles.<sup>15</sup>

---

<sup>14</sup> Y. A. Izzah, E. A., Purnamawati, S. A., & Fajrin, "The Construction of Sentencing Guidelines for Conditional Punishment in Cases of Domestic Violence Perpetrated by Military Personnel," *Proceedings of the 6th International Conference on Law Reform (INCLAR 2025)* 6, no. 1 (2025), [https://doi.org/https://doi.org/10.2991/978-2-38476-491-4\\_18](https://doi.org/https://doi.org/10.2991/978-2-38476-491-4_18).

<sup>15</sup> Pangaribuan, K. A., "Analisis Komparatif Asas-Asas Hukum Pidana Umum Dan Hukum Pidana Militer Dalam Sistem Peradilan Indonesia," *Causa: Jurnal Hukum Dan Kewarganegaraan* 13, no. 8 (2025), <https://doi.org/https://doi.org/10.6679/7w7ska27>.

## Result and Discussion

### Military Criminal Law Regulations in Handling Criminal Cases Committed by TNI Soldiers

Subjects of criminal acts tried within the Military Court include: (a) Soldiers; (b) those equal to soldiers such as Student Soldiers, titular military, and citizens who serve in the TNI under the law; (c) a member of a class or post or body or who is treated as a soldier under the law; and (d) a person who does not belong to groups a, b, or c but on the Commander-in-Chief's Decree with the approval of the Minister of Justice shall be tried by a Court within the Military Court.

Law Number 31 of 1997 is the main legal basis for the implementation of Military Justice in Indonesia, regulating all aspects of the case examination mechanism, starting from investigation, prosecution, verdict, to execution. The Military Criminal Code specifies two types of crimes: (1) main crimes including death penalty, prison sentences, imprisonment, and criminal fines; and (2) additional criminal charges including dismissal from military service with or without revocation of the right to enter the Armed Forces, demotion in rank, and revocation of rights under Article 35 paragraph (1) of the Criminal Code.<sup>16</sup>

In Law Number 31 of 1997 concerning Military Justice, it is explained that the Inspector does not only act as a public prosecutor, but also as an investigator, namely an official who receives an understanding of the authority of the Commander as a superior who has the right to punish the highest to investigate criminal acts committed by Soldiers, and also the executor of the verdict or executor.<sup>17</sup>

The relationship between the KUHPM and the Narcotics Law requires elaboration within this regulatory framework. The principle of *lex specialis* operates at two levels: first, the KUHPM is a *lex specialis* to the general Criminal Code; second, the Narcotics Law is a *lex specialis* to the Criminal Code for narcotics offenses. When a soldier abuses narcotics, the Narcotics Law governs the definition and classification of the offense, while the KUHPM governs the

---

<sup>16</sup> Apripari Apripari Lisnawaty Wadju Badu, "Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer Dalam Perkara Pidana," *Jurnal Legalitas* 12, no. 1 (2019), <https://doi.org/https://doi.org/10.33756/jelta.v12i1.5788>.

<sup>17</sup> Nurdin, "Legitimasi Penasehat Hukum Militer Dalam Sistem Peradilan Di Indonesia Yang Berkeadilan," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 8, no. 2 (2025), <https://doi.org/10.34007/jehss.v8i2.2904>.

additional military penalties. This dual-regime application is consistent with the principle that *lex specialis derogat legi generali* does not necessarily displace the entire general law; rather, specialized provisions supplement the general framework in their respective domains. Scholars have noted that this layered application, while legally coherent, creates practical challenges for judges who must navigate two overlapping normative systems.

The concept of military necessity also provides important theoretical grounding for understanding why military courts apply stricter standards than civilian courts. Military necessity, as articulated in international humanitarian law and domestic military law scholarship, recognizes that the operational effectiveness of armed forces requires a higher standard of discipline and a more stringent legal regime. Construction of sentencing guidelines for military personnel must account for this military necessity dimension while remaining consistent with proportionality principles. This tension between military necessity and individual rights is precisely what produces divergent judicial outcomes when statutory criteria for additional penalties are ambiguous.

The process of resolving criminal acts committed by Military Soldiers begins with a Police Report at the Military Police Investigator, then the Investigator conducts an investigation and investigation, after the Investigator obtains sufficient evidence, then submits the case file to the Case Submission Officer, the Superior with the Right to Punite, and the Prosecutor as the public prosecutor.<sup>18</sup>

The Inspector after receiving the case file from the Investigator, conducts an examination of the formal and material requirements of the case file. If there is a lack of formal requirements or material requirements, the Inspector returns the case file to the Investigator with instructions on the matters that must be completed. After the formal and material requirements of the case file are met, the Inspector makes a Minutes of Opinion and Legal Advice, then sends it to the Case Submission Officer to obtain a Decision.

The Case Submission Officer after receiving the Minutes of Opinion and Case Settlement Suggestions from the Oditur, if agreeing with the Oditur's

---

<sup>18</sup> Karem Sayed Aboelazm Destri Prasetyoandi, Lies Sulistiani, Elis Rusmiati, "Reconceptualizing ANKUM's Role in Military Discipline: A Normative and Comparative Reassessment of Command Authority and Justice," *Jambura Law Rev* 8, no. 1 (2026), <https://doi.org/https://doi.org/10.33756/jlr.v1i1.33722>.

suggestion, immediately issues a Case Submission Decision Letter (Skeppera) and sends it to the Oditur. The Inspector after receiving the Skeppera from the Case Submission Officer immediately made an indictment and then handed over the case file to the Military Court. Once the Military Court has declared that the case file and the Oditur indictment meet the formal and material requirements, the trial can be held.

The implementation of the trial at the Military Court is regulated in Law Number 31 of 1997 concerning Military Justice, starting with the reading of the indictment by the Prosecutor, the examination of the Witnesses, the defendant and evidence, the reading of the charges by the Prosecutor, the submission of the Pleydoy by the defendant or legal counsel, the reading of the response to the Pleydoy (Replica) by the Prosecutor, the reading of the response to the Replica (Duplicate) by the defendant or the Defendant's Legal Advisor to the reading of the verdict by the Panel of Judges.

The Military Criminal Code specifies two types of crimes, namely:

1. The main or principal crime, consists of:
  - a. death penalty;
  - b. **Prison sentences;**
  - c. **Imprisonment; and**
  - d. **Criminal Cover.**
2. Additional criminal charges, consisting of:
  - a. Dismissal from military service with or without revocation of his right to enter the Armed Forces;
  - b. Demotion in rank; and
  - c. Revocation of the rights mentioned in Article 35 paragraph (1) number 1, 2nd and 3rd of the Criminal Code.

In addition to the imposition of a criminal penalty on a Soldier, Disciplinary Punishment can also be imposed, which is in the form of:

1. Reprimands;
2. Light disciplinary detention for a maximum of 14 (fourteen) days; or
3. Severe disciplinary detention is a maximum of 21 (twenty-one) days.

The purpose of punishment in the Military Court is not only repressive, but also preventive, to prevent the recurrence of violations or similar criminal acts and to maintain the honor and authority of the TNI institution.

Despite having a clear legal basis, the examination and sentencing process in the Military Court is often considered less transparent. Some people consider that not all trials are conducted openly for reasons of security and military secrecy, so that this condition raises the suspicion of the general public towards the objectivity and independence of judges.<sup>19</sup> In its implementation, the trial within the Military Court refers to the provisions that apply in the applicable Military Criminal Procedure Code and the applicable Criminal Procedure Code. Basically, court hearings are open to the public, examinations in court sessions are carried out behind closed doors if the provisions of the law require that examinations be carried out behind closed doors, for example during the examination of Witnesses and Defendants in immoral cases. However, after the examination was over, the trial was again held openly in accordance with the provisions of the applicable law. In the context of the rule of law, the openness of the trial is important so that the principle of equality before the law can be applied regardless of the status of the perpetrator.

### **The Difference in the Application of Law in the Decision of the Supreme Court of the Republic of Indonesia Number 98 K/Mil/2025 and Decision Number 391 K/Mil/2024**

The application of the law in the Decision of the Supreme Court of the Republic of Indonesia Number 98 K/Mil/2025, namely Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics, Law Number 31 of 1997 concerning Military Justice, Law Number 48 of 2009 concerning Judicial Power and Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the Second Amendment by Law Number 3 of 2009.

The application of the law in the Decision of the Supreme Court of the Republic of Indonesia Number 391 K/Mil/2024, namely Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics, Article 26 of the Criminal Code, Law Number 31 of 1997 concerning Military Justice, Law Number 48 of 2009 concerning Judicial Power and Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the Second Amendment by Law Number 3 of 2009.

---

<sup>19</sup> E. R. Fidell, "Military Justice and Due Process," *Annual Review of Law and Social Science* 9, no. 1 (2013), <https://doi.org/https://doi.org/10.1146/annurev-lawsocsci-102612-134044>.

There is a difference in the application of the law between the Decision of the Supreme Court of the Republic of Indonesia Number 98 K/Mil/2025 and Decision Number 391 K/Mil/2024, even though both cases are criminal acts of narcotics abuse. In the Decision of the Supreme Court of the Republic of Indonesia Number 391 K/Mil/2024, Article 26 of the Criminal Code applies, while in the Decision of the Supreme Court of the Republic of Indonesia Number 98 K/Mil/2025, Article 26 of the Criminal Code is not applied.

Article 26 of the Criminal Code is an additional penalty in the form of dismissal whose imposition is the authority of the Military Judge, the formulation is as follows:

1. Dismissal from Military service with or without revocation of the right to enter the Armed Forces, other than as provided in Article 39, may be imposed by the Right at the same time as any decision imposing the death penalty or imprisonment on a member of the Military who, based on the crime committed, is considered unfit to remain in the Military.
2. The dismissal according to the law results in the loss of the rights he obtained from the TNI during his previous service, with the exception that the right to retirement will only be lost in the matters mentioned in the pension regulations applicable to the convict.
3. If the dismissal coincides with the revocation of the rights or joining the TNI, according to the law it also results in the loss of the right to own and wear stars, marks of honor, medals or identification marks, as long as the last two are obtained by him in relation to his former service.
4. In contrast to the penal system in the Criminal Code, in the system of the Military Criminal Code (KUHPM) if a Soldier/Military is proven guilty of committing a criminal act, in addition to being sentenced to the main crime with the considerations of the Judge, an additional penalty can also be imposed in the form of dismissal from military service. The system of sentencing is left to the Judge with considerations that are typical of the Military or *lex specialis*. This provision does not exist in the Criminal Code.

5. The existence of the criminal law on dismissal in the Criminal Code does not explicitly state the conditions that must be met and considered by judges in imposing additional penalties for dismissal. Article 26 Paragraph (1) of the Criminal Code only states that an additional penalty of dismissal can be imposed by a Military Judge against a Military member who commits a criminal act if in the Judge's judgment it is considered no longer suitable to be retained in Military service, while the criteria or parameters of whether or not a Military member is fit to remain in Military service which is used as the basis for the Judge's consideration in imposing an additional penalty of dismissal is not explained in the Criminal Code.
6. For the Military Soldier who was sentenced to the additional penalty of dismissal, dismissal from Military service is the end of his career and service in the Indonesian National Army (TNI), the consequence of which will be followed by the termination of the rights received during his time as a Military Soldier. Therefore, the judge must consider carefully before imposing an additional penalty of dismissal.
7. Dismissal from military service as an additional criminal sanction is optional for the judge and is not imperative, meaning that the judge can consider according to his judgment before deciding to impose an additional penalty of dismissal on the defendant, because in addition to dismissal, additional penalties can be in the form of demotion to a lower level and salary deduction to the defendant.
8. In its implementation, the additional penalty of dismissal from Military service against a Military Soldier administratively cannot be carried out at the same time as the Judge's decision. The dismissal has an administrative aspect, so there must be a definitive Decree from the authorized officials.
9. In the provisions of Article 196 Paragraph (3) of Law Number 31 of 1997 concerning Military Justice, it states: "A copy of the court decision is given to the Case Submission Officer (Papera), Inspector, Military Police, and Superiors with the Right to Punish". This provision contains the meaning of the imposition of additional punishment of dismissal if it has been declared to have permanent

legal force (BHT) must be continued and implemented by the Unit Commander for further dismissal of the soldier concerned.

To facilitate systematic comparison of the two decisions, the following table presents the key elements of each ruling:

**Table 1.** Comparative Analysis of Supreme Court Decisions No. 98 K/Mil/2025 and No. 391 K/Mil/2024

Aspek / Aspect	Putusan No. 98 K/Mil/2025	Putusan No. 391 K/Mil/2024
Defendant	SR (name withheld)	WR (name withheld)
Narcotic Type	Pil Ekstasi (Kelas I)	Methamphetamine (Class I)
Frequency	First time	Lebih dari sekali (2021 & 2023) / More than once
Main Penalty	1 Year Prison	Year Prison
Dismissal	Not imposed	Imposed
Applied Article	Pasal 127(1)a UU 35/2009	Pasal 127(1)a UU 35/2009 + Pasal 26 KUHPM
Prior Record	No prior offense	Prior disciplinary record
SEMA Basis	SEMA No. 3 Tahun 2023 diterapkan / Applied	SEMA No. 3 Tahun 2023 tidak diterapkan / Not applied

The table 1 above reveals a clear pattern: the sole dispositive distinction between the two cases is the frequency of narcotics use and prior disciplinary record. In both cases, the defendants were TNI soldiers convicted under the same statutory provision (Article 127(1)(a)), with the same level of narcotics (Class I), and received the same principal punishment (one year imprisonment). The differential imposition of dismissal can therefore be attributed exclusively to the factors enumerated in SEMA Number 3 of 2023: first-time use and absence of prior offenses. This finding suggests that the apparent ‘disparity’ is, in fact, the correct application of differentiated sentencing criteria to factually distinct cases a distinction that, however, was not made explicit in the lower court decisions and required Supreme Court intervention to articulate.

In contrast to the penal system in the Criminal Code, in the system of the Military Criminal Code (KUHPM) if a Soldier/Military is proven guilty of committing a criminal act, in addition to being sentenced to the main crime

with the considerations of the Judge, an additional penalty can also be imposed in the form of dismissal from military service. The system of sentencing is left to the Judge with considerations that are typical of the Military or *lex specialis*. This provision does not exist in the Criminal Code.

The existence of the criminal law on dismissal in the Criminal Code does not explicitly state the conditions that must be met and considered by judges in imposing additional penalties for dismissal. Article 26 Paragraph (1) of the Criminal Code only states that an additional penalty of dismissal can be imposed by a Military Judge against a Military member who commits a criminal act if in the Judge's judgment it is considered no longer suitable to be retained in Military service, while the criteria or parameters of whether or not a Military member is fit to remain in Military service which is used as the basis for the Judge's consideration in imposing an additional penalty of dismissal is not explained in the Criminal Code.

For the Military Soldier who was sentenced to the additional penalty of dismissal, dismissal from Military service is the end of his career and service in the Indonesian National Army (TNI), the consequence of which will be followed by the termination of the rights received during his time as a Military Soldier. Therefore, the judge must consider carefully before imposing an additional penalty of dismissal.

Dismissal from military service as an additional criminal sanction is optional for the judge and is not imperative, meaning that the judge can consider according to his judgment before deciding to impose an additional penalty of dismissal on the defendant, because in addition to dismissal, additional penalties can be in the form of demotion to a lower level and salary deduction to the defendant.

In its implementation, the additional penalty of dismissal from Military service against a Military Soldier administratively cannot be carried out at the same time as the Judge's decision. The dismissal has an administrative aspect, so there must be a definitive Decree from the authorized officials.

In the provisions of Article 196 Paragraph (3) of Law Number 31 of 1997 concerning Military Justice, it states: "A copy of the court decision is given to the Case Submission Officer (Papera), Inspector, Military Police, and Superiors with the Right to Punish". This provision contains the meaning of the imposition of additional punishment of dismissal if it has been declared to have

permanent legal force (BHT) must be continued and implemented by the Unit Commander for further dismissal of the soldier concerned.

### **The Difference in the Judges' Considerations and its Implications for Legal Certainty and Justice**

Drug abuse is the use of narcotics, psychotropics, or other addictive substances illegally, uncontrollably, and outside of medical purposes. Without medical supervision, that is, using medications that are supposed to be with a doctor's prescription for recreational or self-soothing purposes. Against the law, i.e. consuming, possessing or storing substances that are prohibited by law. The wrong goal is to use substances to alter mood, thought, or behavior excessively to interfere with social and physical functioning. According to Law Number 35 of 2009 concerning Narcotics, abusers are people who use narcotics without rights or against the law.

Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics explicitly states that a person who abuses in this case consumes without rights and without permission, class I narcotics for himself or herself can be charged with criminal penalties. The emphasis on abuse, class I narcotics and for oneself, shows that in order to be categorized as a narcotics abuser, there must be the act of consuming a substance that based on the results of laboratory tests is declared to be a class I narcotic and the narcotic is used for himself.

The procedure for resolving narcotics abuse cases carried out by Military Soldiers follows the Military Law route regulated in Law Number 31 of 1997 concerning Military Courts and Military Criminal Procedure Law. After a report of this criminal act, it will be processed through an investigation and investigation mechanism by Military law enforcement officials, involving the Military Police and the Military Inspectorate. The case was then submitted to the Military Court for legal processing and decided by a Military Judge.

In this study, two decisions were used as the object of analysis, namely Decision Number 98 K/Mil/2025 and Decision Number 391 K/Mil/2024. These two Supreme Court decisions are related to the crime of narcotics abuse committed by TNI Soldiers. The analysis of these two decisions aims to find out the consideration of the Military Judge in deciding the case.

In Decision Number 98 K/Mil/2025, the Judge in his verdict stated:

1. Rejecting the cassation application from the Cassation Applicant/defendant Serda Rizky Wahyudi;
2. Amending the Decision of the High Military Court I of Medan Number 98-K/PMT-I/BDG/AD/XI/2024 dated January 13, 2025 which strengthens the Decision of the Military Court I-02 Medan Number 116-K/PM. I-02/AD/X/2024 dated November 11, 2024 regarding the penalty imposed on the Defendant with the elimination of the additional penalty of dismissal from military service, so that the penalty imposed on the Defendant becomes a prison sentence of 1 (one) year deducted entirely from the sentence imposed;
3. Charging the Defendant a case fee to pay the case fee at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah).

In legal considerations, the Judge stated the following:

1. The role of the Defendant in the a quo case was to consume narcotics of the type of ecstasy pills because he was invited by his friends;
2. The defendant was consuming narcotics for the first time; and
3. The defendant had never been convicted before/sentenced to military discipline.

Meanwhile, in Decision Number 391 K/Mil/2024, the Judge in his decision stated:

1. Rejecting the cassation application from the Cassation Applicant/Defendant Serma Wahyu Ramadhan;
2. Charging the Defendant to pay the case fee at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah).

In his consideration, the Supreme Court judge assessed the decision of the High Military Court I Medan Number 48-K/PMT. I/BDG/AD/VII/2024 which corroborates the decision of the I-02 Medan Military Court Number 38-K/PM. I-02/AD/III/2024 on the evidence of the indictment of the Military Inspector Article 127 a Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics and the imposition of a prison sentence of 1 (one) year and additional punishment of dismissal from military service, is appropriate and correct. The First Instance Judge at the I-02 Medan Military Court in his decision gave the following considerations:

1. That the Defendant's actions were contrary to the 3rd (third) Sapta Marga and the Soldier's Oath in the 2nd (second) point;

2. That the Defendant's actions have a bad effect and can damage the joints of soldier discipline in his unit so as to affect the implementation of the main duties of the Defendant's unit;
3. That the Defendant's actions were carried out more than once, namely in 2021 and on August 28, 2023 the Defendant consumed methamphetamine-type narcotics which are strictly prohibited by the top leadership of the TNI;
4. That the Defendant's actions are contrary to the Government's program which is currently intensively eradicating illicit trafficking and narcotics abuse which is included as an Extra Ordinary Crime and can damage the nation's generation;
5. That the Defendant's actions have defamed the TNI, especially the TNI AD in the midst of a community that is currently fighting against illicit circulation and narcotics abuse.

Unlike the previous decision, the Judge in this case imposed an additional penalty in the form of dismissal from military service.

From these two decisions, it can be concluded that the Judge's consideration in deciding the case of narcotics abuse by TNI Soldiers is highly dependent on violations in the joints of military life, namely the Sapta Marga and the Soldier's Oath; the influence of the Defendant's actions on discipline and the implementation of duties in the unit; the consequences caused to the environment of the TNI in particular and the community in general; loyalty to Government programs; and the interests of the TNI.

Special considerations from the Judge so that the perpetrator can be sentenced to additional criminal sanctions of dismissal from the TNI service are how many times the Defendant has abused narcotics, the reason for consuming narcotics and whether the Defendant has previously committed a criminal act.

### **Theoretical Analysis: Legal Certainty, Justice, and Military Necessity**

The foregoing comparative analysis must be situated within an integrated theoretical framework. This study employs three complementary theoretical lenses: Apeldoorn's doctrine of legal certainty, Rawls' theory of justice, and the concept of military necessity.<sup>20</sup>

---

<sup>20</sup> John Rawls, *Theory of Justice (Rev. Ed.)* (Cambridge: MA: Harvard University Press, 1999).

Apeldoorn's concept of legal certainty encompasses two dimensions: *bepaalbaarheid* (the ability to determine what the law requires before a case arises) and legal security (protection against arbitrary judicial action). Applied to the cases under analysis, the pre-SEMA situation failed on both dimensions. Soldiers and their legal counsel could not predict, prior to adjudication, whether a conviction for first-time narcotics abuse would result in dismissal, because the statutory criteria (Article 26 KUHPM) were silent on the threshold for 'unfitness to remain in military service.' The post-SEMA situation improves *bepaalbaarheid* by providing explicit criteria, but raises questions about the appropriate vehicle for such guidelines: should sentencing criteria be established by Supreme Court circular letter (SEMA) or by statutory amendment? The latter would provide stronger legal certainty because SEMA lacks the formal force of law and can be amended or withdrawn without legislative process.<sup>21</sup>

From a Rawlsian perspective, the analysis is more nuanced. Rawls' difference principle holds that social inequalities are justified only if they benefit the least advantaged members of society. In the military justice context, the 'least advantaged' are soldiers who face the most severe sanction: dismissal with loss of all accumulated service benefits. Applying the difference principle, the differential treatment of first-time offenders (no dismissal) versus repeat offenders (dismissal) is justifiable only if it produces overall benefits for military personnel as a class. If the primary purpose of dismissal is deterrence and institutional protection, then its differential application based on recidivism is consistent with the Rawlsian framework: it focuses the most severe sanction on those whose conduct most clearly demonstrates sustained disregard for military discipline. However, Rawls also requires that the procedural basis for such distinctions be transparent and applied consistently a requirement that the pre-SEMA regime failed to satisfy.

The military necessity doctrine provides a third analytical lens. Military necessity, at its core, justifies deviations from general legal norms when operationally required. In the narcotics context, the military necessity of

---

<sup>21</sup> James E. Baker, "Is Military Justice Sentencing on the March? Should It Be? And If So, Where Should It Head? Court-Martial Sentencing Process, Practice, and Issues," *Federal Sentencing Reporter* 27, no. 2 (2014), <https://doi.org/https://doi.org/10.1525/fsr.2014.27.2.72>.

maintaining a drug-free force supports stringent sanctions. However, military necessity is not a blanket justification for disproportionate or arbitrary punishment; it must be calibrated to the actual threat posed by the individual defendant's conduct. A first-time offender who consumed a substance due to peer influence poses a materially different threat to unit cohesion than a repeat offender who demonstrated a pattern of illegal drug use over multiple years. The differential sentencing outcomes in the two decisions under analysis are therefore consistent with the military necessity principle, when properly understood as requiring proportionality between sanction and threat.

Synthesizing these three frameworks, this study concludes that the sentencing disparity revealed by the two Supreme Court decisions is not simply a failure of judicial consistency, but reflects a deeper structural problem: the absence of a formal, statutory sentencing guideline regime for military narcotics cases. SEMA Number 3 of 2023 is a pragmatic response to this gap, but it is an insufficient structural solution. The enactment of statutory sentencing guidelines, subject to parliamentary scrutiny and constitutional review, would more effectively satisfy the requirements of legal certainty, Rawlsian justice, and the proportional application of military necessity.

In the context of the theory of legal certainty, the act of imposing criminal sanctions on perpetrators of narcotics abuse by TNI Soldiers should provide legal firmness that can be predicted by all parties. According to Apeldoorn, legal certainty has two aspects that must be understood, the first aspect is about *bepaalbaarheid* or the ability to form laws through several things that are concrete in nature. This means that the party seeking justice can know that the law is in a special case before starting a case. While the second aspect, legal certainty means legal security. Apeldoorn stated that legal certainty is a protection for several parties against the arbitrariness of judges.<sup>22</sup> When a TNI Soldier commits a criminal act of narcotics abuse, the legal consequences he faces must be clear, firm, and in accordance with the norms that apply in the military justice system.

However, when viewed from the two decisions that are the object of research, namely Decision Number 98 K/Mil/2025 and Decision Number 391 K/Mil/2024, significant differences were found in the sentence, even though

---

<sup>22</sup> L. J. van Apeldoorn, *Introduction to Law*, 30th Editi (Malang: PT. Pradnya Paramita, 2004).

the two Defendants committed the same criminal act, namely the abuse of class I narcotics for themselves. In the case of Serda Rizky Wahyudi, he was only sentenced to the main penalty in the form of imprisonment without being sentenced to an additional sentence, while in the case of Serma Wahyu Ramadhan, the Defendant was sentenced to the main sentence in the form of imprisonment and was also sentenced to an additional penalty of dismissal from the TNI service.

The measure of the imposition of dismissal in addition to the main crime is the "view" of the military judge regarding the crime committed by the defendant/convict based on "values" as no longer suitable to be maintained in the life of the military community. It can be felt how much trust this has been bestowed should be a warning to military judges if they want to uphold justice. If this dismissal is imposed, then in the "view/judgment" of the military judge, it must be included or implied a meaning, that if the dismissal is not imposed, then the presence of the convict later in the military society after he has completed his sentence, will shake the joints of order in the military society.<sup>23</sup>

This inequality raises problems from the perspective of justice. According to John Rawls, justice in the general concept is that social values are distributed equally unless the unequal distribution brings benefits to everyone. This means that everyone must benefit from any social inequalities.<sup>24</sup> In this case, the Judge's consideration related to how many times the defendant has abused narcotics, the reason for consuming narcotics and whether the defendant had previously committed a criminal act, became a distinguishing factor. Although juridically justifiable, these differences in rulings still raise questions about the consistency of the application of the principle of substantive justice in the military justice system.

In addition, justice must not only be seen in the results (verdicts), but also in the process carried out. Therefore, it is important for military law enforcement officials to ensure that the entire process of investigation, prosecution, trial process, and verdict determination is carried out with integrity

---

<sup>23</sup> S. R. Sianturi, *Hukum Pidana Militer Di Indonesia* (Jakarta: Badan Pembinaan Hukum TNI, 2010).

<sup>24</sup> Karen/Penterjemah Yudi Santoso Leback, *Teori-Teori Keadilan*, 6th ed. (Bandung: Nusa Media, 2018).

and can be accounted for, to prevent disparities in verdicts that can damage trust in the military justice institution.

Thus, the difference in the verdicts in the two cases referred to in this analysis shows the importance of updating the rules and the implementation of penal guidelines, especially regarding the abuse of narcotics by TNI Soldiers in the military justice environment. This is in accordance with the principle of the rule of law which demands legal certainty, fair treatment, and protection of human rights, including in the military justice environment. Consistency in the application of sanctions is also important to maintain order and legal certainty within the TNI.

To prevent arbitrary judges in imposing additional penalties of dismissal, the existence of legal certainty, fair treatment and human rights protection for TNI Soldiers who commit the crime of narcotics abuse, the Supreme Court has issued a provision that is the result of the plenary meeting of the military chamber, namely the Supreme Court Circular Letter (SEMA) Number 3 of 2023, in point 1 letter c it is determined that the imposition of additional penalties of dismissal, It is not imposed on a soldier (defendant) who is proven to be a narcotics abuser if it is found that the legal fact that:

1. the defendant was consuming narcotics for the first time;
2. The defendant has never violated the law, both criminal and disciplined.

With the existence of SEMA Number 3 of 2023, it is a guideline and the judge's argument in imposing additional penalties for dismissal from the TNI service against TNI Soldiers who commit the crime of narcotics abuse.

## **Conclusion**

The regulation of Military Criminal Law in handling cases of criminal acts committed by TNI Soldiers is governed by Law Number 31 of 1997 concerning Military Justice. The difference in the application of law between Decision Number 98 K/Mil/2025 and Decision Number 391 K/Mil/2024 lies in the application of Article 26 Paragraph (1) of the KUHPM regarding the imposition of additional penalties in the form of dismissal from TNI service. The key differentiating factors are the frequency of narcotics abuse, the reason for consumption, and prior criminal record. Applying an integrated theoretical framework of Apeldoorn's legal certainty doctrine, Rawls' theory of justice, and the military necessity principle, this study

concludes that the sentencing disparity reflects a structural problem rather than arbitrary judicial misconduct: the absence of formal, statutory sentencing guidelines for military narcotics cases. SEMA Number 3 of 2023 represents a necessary but insufficient response. The study recommends: (1) enactment of statutory sentencing guidelines for military narcotics cases through legislative amendment to Law Number 31 of 1997; (2) establishment of a mandatory consideration framework for Article 26 KUHPM dismissal decisions; (3) mandatory judicial training on the proportionality requirements of military necessity doctrine and human rights standards; and (4) the adoption of a systematic comparative case analysis approach in military judicial training programs to strengthen consistency in sentencing.

### **Acknowledgement**

The authors would like to express their sincere gratitude and appreciation to all individuals who provided valuable support, insightful comments, and constructive feedback throughout the research and manuscript preparation process. The authors also gratefully acknowledge the academic and institutional support provided by the Master of Law Program, Graduate School, Universitas Muhammadiyah Sumatera Utara, which significantly contributed to the successful completion of this study.

### **Author Contributions Statement**

DA, was responsible for the conceptualization of the study, research design, methodology development, data collection and analysis, manuscript drafting, and revision. IK, contributed to the supervision of the research, validation of the analytical framework, critical review of the manuscript, and final editing. Both authors have read and approved the final version of the manuscript and agree to be accountable for all aspects of the work, ensuring the accuracy, validity, and integrity of the research.

### **AI Usage Statement**

The authors used Artificial Intelligence (AI) tools solely to assist with language enhancement, grammar correction, and the improvement of manuscript readability. All research ideas, analyses, interpretations, arguments, and scholarly contributions presented in this article are the original work and sole responsibility of the authors. The authors carefully reviewed and verified all AI-assisted outputs prior to submission to ensure their accuracy, integrity, and compliance with accepted academic standards and research ethics.

## Conflict of Interest

The authors declare that there are no conflicts of interest, whether financial, professional, institutional, or personal, that could have influenced the conduct, findings, interpretation, or publication of this research. The authors further affirm that the study was conducted independently, objectively, and in accordance with the principles of academic integrity and research ethics.

## References

- Adegbite, O. B. "Law Enforcement, Military Discipline, and the Notion of Military Justice: Building a Case for the Constitutional Rights of Service Personnel in Nigeria." *Journal of Indonesian Legal Studies* 4, no. 1 (2019). <https://doi.org/https://doi.org/10.15294/jils.v4i01.28967>.
- Apeldoorn, L. J. van. *Introduction to Law*. 30th Editi. Malang: PT. Pradnya Paramita, 2004.
- Baker, James E. "Is Military Justice Sentencing on the March? Should It Be? And If So, Where Should It Head? Court-Martial Sentencing Process, Practice, and Issues." *Federal Sentencing Reporter* 27, no. 2 (2014). <https://doi.org/https://doi.org/10.1525/fsr.2014.27.2.72>.
- BNN, Humas. "Pengertian Narkoba Dan Bahaya Narkoba Bagi Kesehatan." BNN RI, n.d. [https://bnn.go.id/pengertian-narkoba-dan-bahaya-narkoba-bagi-kesehatan/#:~:text=Pengertian Narkoba \(Narkotika dan Obat-obatan\),kesadaran%2C halusinasi%2C serta daya rangsang](https://bnn.go.id/pengertian-narkoba-dan-bahaya-narkoba-bagi-kesehatan/#:~:text=Pengertian Narkoba (Narkotika dan Obat-obatan),kesadaran%2C halusinasi%2C serta daya rangsang).
- Breen, Patricia D., and Brian D. Johnson. "Military Justice: Case Processing and Sentencing Decisions in America's 'Other' Criminal Courts." *Justice Quarterly* 35, no. 4 (2018). <https://doi.org/https://doi.org/10.1080/07418825.2017.1335763>.
- Destri Prasetyoandi, Lies Sulistiani, Elis Rusmiati, Karem Sayed Aboelazm. "Reconceptualizing ANKUM's Role in Military Discipline: A Normative and Comparative Reassessment of Command Authority and Justice." *Jambura Law Rev* 8, no. 1 (2026). <https://doi.org/https://doi.org/10.33756/jlr.v1i1.33722>.
- Fidell, E. R. "Military Justice and Due Process." *Annual Review of Law and Social Science* 9, no. 1 (2013). <https://doi.org/https://doi.org/10.1146/annurev-lawsocsci-102612-134044>.
- Harahap, Yahya. *Pembahasan Permasalahan Dan Penerapan KUHAP:Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika, 2012.
- Hartawan, D. B., Andrisman, T., & Husin, B. R. "Legal Considerations of Military Judges Regarding Drug Abuse by TNI." *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 3, no. 2 (2024).

- <https://doi.org/https://doi.org/10.35912/jihham.v3i2.2961>.
- Hoyle, Carolyn, Lucy Harry. "Diversion or Death? The Moral Framework Shaping Bifurcated Punishments for Drug Offences in Indonesia." *Drugs: Education, Prevention and Policy* 32, no. 4 (2025). <https://doi.org/https://doi.org/10.1080/09687637.2024.2402262>.
- Indonesia, Republik. Undang-Undang Nomor 3 Tahun 2002 Tentang Pertahanan (2002).
- Izzah, E. A., Purnamawati, S. A., & Fajrin, Y. A. "The Construction of Sentencing Guidelines for Conditional Punishment in Cases of Domestic Violence Perpetrated by Military Personnel." *Proceedings of the 6th International Conference on Law Reform (INCLAR 2025)* 6, no. 1 (2025). [https://doi.org/https://doi.org/10.2991/978-2-38476-491-4\\_18](https://doi.org/https://doi.org/10.2991/978-2-38476-491-4_18).
- Leback, Karen/Penterjemah Yudi Santoso. *Teori-Teori Keadilan*. 6th ed. Bandung: Nusa Media, 2018.
- Lisnawaty Wadju Badu, Apripari Apripari. "Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer Dalam Perkara Pidana." *Jurnal Legalitas* 12, no. 1 (2019). <https://doi.org/https://doi.org/10.33756/jelta.v12i1.5788>.
- Maswandi. "Competence of Military Justice in Criminal Disputes of Servicemen." *IAML Journal* 4, no. 3 (2025). <https://doi.org/https://doi.org/10.59712/iaml.v4i3.140>.
- Nurdin. "Legitimasi Penasehat Hukum Militer Dalam Sistem Peradilan Di Indonesia Yang Berkeadilan." *Journal of Education, Humaniora and Social Sciences (JEHSS)* 8, no. 2 (2025). <https://doi.org/10.34007/jehss.v8i2.2904>.
- Pangaribuan, K. A., Dkk. "Analisis Komparatif Asas-Asas Hukum Pidana Umum Dan Hukum Pidana Militer Dalam Sistem Peradilan Indonesia." *Causa: Jurnal Hukum Dan Kewarganegaraan* 13, no. 8 (2025). <https://doi.org/https://doi.org/10.6679/7w7ska27>.
- Rawls, John. *Theory of Justice (Rev. Ed.)*. Cambridge: MA: Harvard University Press, 1999.
- Republik Indonesia. Undang-Undang Nomor 14 Tahun 1970 Tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman (1970).
- . Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer (1997).
- Salam, A. "The Concept of Rehabilitation Law for Military Personnel Who Commit Narcotics Crimes." *Journal of Law and Social Politics* 3, no. 1 (2025). <https://doi.org/https://doi.org/10.59261/jlsp.v3i1.50>.
- Sianturi, S. R. *Hukum Pidana Militer Di Indonesia*. Jakarta: Badan Pembinaan

Hukum TNI, 2010.

Trianingsih, Retno Sella. "JURIDICAL ANALYSIS OF THE DISPARITY OF JUDGES' DECISIONS TO DRUG OFFENDERS IN THE SAME CASE (CASE STUDY OF EAST JAKARTA DISTRICT COURT DECISION NUMBER 334/PID.SUS/2022/PN.JKT.TIM, 335/PID.SUS/2022/PN.JKT.TIM, 336/PID.SUS/2022/PN.JKT.TIM, 337/PID.SUS/2022." *Journal Equitable* 9, no. 2 (2024). <https://doi.org/https://doi.org/10.37859/jeq.v9i2.6751>.

Zgoliński, Igor. "MILITARY CRIMINAL LAW AS ONE ELEMENT OF SECURITY." *Politics & Security* 10, no. 4 (2024). <https://doi.org/https://doi.org/10.54658/ps.39384210.2024.10.4.pp.67-76>.