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# The Interrelation Between Military Discipline Infraction and Military Criminal Charge in Indonesia

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## ABSTRACT

*Violations of the Military Discipline Law that culminate in a disciplinary tribunal's decision possess only minimal binding force. In other words, the tribunal's ruling merely serves as a recommendation to the superior vested with punitive authority (atasan yang berhak menghukum, abbreviated as Ankum). If it subsequently emerges that an incident threatens the integrity of a military unit, the Ankum is entitled to invoke a higher level of legal authority by referring the matter to a military criminal court. In narcotics cases committed by military personnel that are initially deemed disciplinary infractions, the Ankum may subsequently refer the matter to the Military Police (Polisi Militer, legally abbreviated as POM) for further military criminal proceedings. This study constitutes doctrinal legal research supported by data drawn from the literature. To address the research questions, a legal-literature-review approach was adopted. The findings indicate that violations of Indonesian military disciplinary law may escalate into military criminal offenses through the decision-making process of the Ankum.*

**Keywords:** Military Criminal Law; Military Discipline Law; Narcotics;  
Ankum Indonesia.



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## INTRODUCTION

In Indonesia's Military System,<sup>1</sup> discipline is the cornerstone for maintaining order, efficiency, and professionalism among service members in the performance of their duties. The Military Discipline Law of the Indonesian National Armed Forces (*Tentara Nasional Indonesia*, legally abbreviated as TNI) delineates behavioral guidelines for all TNI personnel in their interactions with the public, both when exercising official authority and when off duty in civilian settings.<sup>2</sup> These norms are codified in Law No. 25 of 2014 on Military Discipline, which carries binding legal force and embodies the high moral values that guide TNI members to conduct themselves in accordance with ethical standards.<sup>3</sup>

When a TNI member commits a disciplinary breach or violates the Code of Ethics, the resulting disciplinary or ethics tribunal decision faces certain legal challenges. In particular, its outcome is neither final nor legally binding, since the ultimate authority to impose punishment resides with the superior vested with disciplinary power (*Ankum*).<sup>4</sup> The tribunal's ruling therefore serves

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<sup>1</sup> Faisal Salam, *Hukum Pidana Militer Di Indonesia*, 1st ed. (Bandung: Mandar Maju, 2002); E. Y. Kanter and S. R. Sianturi, *Hukum-Hukum Pidana Militer Di Indonesia*, 1st ed. (Jakarta: Alumni, 1981).

<sup>2</sup> Indonesia, "Undang Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia," 2004.

<sup>3</sup> Tuta Herawati et al., "Implementasi Kebijakan Undang Undang Republik Indonesia Nomor 25 Tahun 2014 Tentang Hukum Disiplin Militer Di Polisi Militer Daerah Militer II Sriwijaya," *Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA)* 2, no. 1 (2022): 156–64.

<sup>4</sup> The primary objective of the superior with punitive authority, commonly referred to as the *Ankum*, in imposing disciplinary sanctions is to deter future violations of military discipline. The term *Ankum* designates the commanding officer vested with the power to administer disciplinary measures against any member of the Indonesian National Armed Forces under his or her command who commits a breach of military disciplinary law. Although the *Ankum* holds the authority to impose discipline, this authority is stratified into three distinct levels: full authority, limited authority, and highly restricted authority. Each level corresponds to the gravity of the infraction and the rank of both the offender and the imposing officer, thereby ensuring that disciplinary decisions are proportionate and consistent with the hierarchical structure of military command, Aldy Mirozul et al., "Peran *Ankum* Dalam Pemberian Sanksi Pelanggaran Disiplin Militer Dari Perspektif Keadilan Dan Pembinaan Prajurit," *Birokrasi: JURNAL ILMU HUKUM DAN TATA*

only as a recommendation to the *Ankum*, based on the facts established during the hearing. Consequently, the role of the Military Police within the TNI becomes crucial, as their involvement significantly impacts the enforcement of discipline and the upholding of the TNI Code of Ethics.<sup>5</sup>

Within the realm of military criminal offenses, Military Criminal Law forms part of the Indonesian positive law framework, often referred to as a special criminal code that applies exclusively to:

1. Military personnel.
2. Persons legally equated with military personnel under the applicable statutes.
3. Members of any corps, office, body, or any other category who are equated with or regarded as military personnel by law.
4. Individuals not falling under the above categories, but who, by decision of the Commander (with the approval of the Minister of Justice), are to be tried before a military court.

A breach of Military Disciplinary Law is defined as any act or conduct by a service member that violates military statutes or regulations, or that contradicts the core values of military life as articulated in the Sapta Marga and the Soldier's Oath (*Sumpah Prajurit*).<sup>6</sup> Disciplinary breaches fall into two broad categories: pure

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NEGARA 2, no. 4 (November 19, 2024): 145-55, <https://doi.org/10.55606/birokrasi.v2i4.1582>.

<sup>5</sup> Romiduk Gurning, Rizkan Zulyadi, and M. Citra Ramadhan, "Analysis of Law Enforcement on the Case of THTI TNI Soldiers at the Medan Military Court," *Journal of Public Representative and Society Provision* 5, no. 1 (January 31, 2025): 105-12, <https://doi.org/10.55885/jprsp.v5i1.495>.

<sup>6</sup> Members of the Indonesian National Armed Forces are bound to adhere to the Sapta Marga and the Soldier's Oath, to maintain military discipline, and to execute all lawful service orders. In the context of military justice, it is also essential to understand the terminology that governs case resolution, including the authorities empowered to initiate proceedings, the officers authorized to perform prosecutorial functions, and the officials charged with enforcing court or tribunal decisions within the military judiciary, Anggriani Wau, "Crimination of Acts of Violence Which Performed Arbitrarily for Superiors Against Underboards in the Military Environment," *LEGAL BRIEF* 12, no. 3 (August 30, 2023): 290-98, <https://doi.org/10.35335/legal.v12i3.824>.

disciplinary offences (*Pelanggaran Disiplin Murni*) and impure disciplinary offences (*Pelanggaran Disiplin Tidak Murni*).<sup>7</sup>

1. Pure disciplinary offences (Article 8(a)) comprise all acts that contravene official orders or regulations, or that fail to conform to established military discipline.
2. Impure disciplinary offences (Article 8(b)) consist of those acts that violate criminal law provisions but are of such minor gravity that they are treated within the disciplinary system rather than the criminal courts.

The phrase “acts that violate criminal-law provisions but are of such minor gravity” under Article 8(b) encompasses:

1. Any offence under applicable statutes carrying a maximum prison term of three months or a maximum detention of six months.
2. Offences that are simple in nature and readily provable.
3. Offences that do not impair military interests or the public interest.
4. Offences arising from unauthorized absence in peacetime for up to four days.<sup>8</sup>

The Indonesian National Armed Forces (TNI) are duty bound to demonstrate loyalty to the state and to discharge their responsibilities conscientiously, refraining at all times from breaches of military disciplinary law,<sup>9</sup> whether that be violations of orders and service regulations, failures to observe military protocols, or commission of minor criminal offenses. Should any TNI member commit such a disciplinary infraction, whether against service orders, military

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<sup>7</sup> Riky Pribadi and Danny Rahadian Sumpono, “Implementasi Penegakan Hukum Pidana Terhadap Oknum TNI Yang Memfasilitasi Pelaku Tindak Pidana Narkotika Berdasarkan Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer,” *Journal Presumption of Law* 3, no. 1 (April 1, 2021): 36–54, <https://doi.org/10.31949/jpl.v3i1.981>.

<sup>8</sup> Indonesia, “Undang Undang Nomor 25 Tahun 2014 Tentang Hukum Disiplin Militer,” 2014.

<sup>9</sup> Jan Muhammad Altair, “Penyelesaian Pelanggaran Hukum Disiplin Militer Menurut Undang Undang Nomor 25 Tahun 2014 Tentang Hukum Disiplin Militer,” *Lex Privatum* 5, no. 7 (2017).

directives, or minor criminal statutes, the matter must be adjudicated under the military disciplinary system. This ensures that the public sees TNI personnel held to the same legal standards as civilians. Once a breach is established, the TNI member in question may face legal prosecution and sanctions as prescribed by applicable legislation.<sup>10</sup>

As practitioners steeped in a pragmatic mindset that balances individual rights, authority, and duties in harmony with societal welfare pursuant to the Pancasila philosophy, TNI members are historically oriented toward unity of nation and state. As an instrument of state, they must constantly safeguard the integrity of the Republic of Indonesia, defending it against both external threats and internal subversion. Yet in practice, not all service members uphold this disciplinary standard. A particularly troubling trend is the misuse and trafficking of narcotics within the ranks. In numerous instances, what begins as a routine disciplinary violation can evolve into a grave criminal offense.<sup>11</sup>

Disciplinary breaches involving TNI personnel often provoke heightened public sensitivity given the military's critical role in national security and sovereignty.<sup>12</sup> Any infraction by a service member not only tarnishes the TNI's institutional reputation but also undermines troop morale and internal cohesion. Drug related crimes among the military thus demand special attention. They compromise the institution's image, jeopardize operational readiness, and may

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<sup>10</sup> Arif Susanto, Taufik Siregar, and Ridha Haykal Amal, "Implementation of the Role of *Ankum* and *Papera* in the Process of Resolving Military Cases in the Jurisdiction," *Journal La Sociale* 6, no. 2 (March 27, 2025): 540–47, <https://doi.org/10.37899/journal-la-sociale.v6i2.1981>.

<sup>11</sup> Reygen Rionaldo Sarayar, "Jenis Jenis Pidana Dan Pelaksanaan Pemidanaan Dalam Hukum Pidana Militer," *Lex Crimen*, no. 8 (2018): 18.

<sup>12</sup> Sungkono Sungkono et al., "A Review of Enforcement of Military Discipline Law to Establish Professionalism of the National Army to Strengthen National Security and Resilience," *Rekayasa* 17, no. 1 (April 17, 2024): 124–30, <https://doi.org/10.21107/rekayasa.v17i1.24653>.

create openings for criminal networks to infiltrate the armed forces, thereby weakening the nation's overall defense posture.<sup>13</sup>

Narcotics (commonly abbreviated as *narkotika* or *narkoba* in Indonesia) encompasses narcotics, psychotropic substances, and other hazardous addictive materials. The term derives from the Greek "narkoun", meaning to numb or to paralyze. Narcotics are substances, plant derived or synthetic, that alter sensory perception, relieve pain, and carry a high risk of dependency. In response to the narcotics threat, the Indonesian government has enacted successive laws: Law No. 9 of 1976 on Narcotics, refined by Law No. 22 of 1997, and ultimately replaced by Law No. 35 of 2009 on Narcotics,<sup>14</sup> each designed to regulate and curb the manufacture, distribution, and consumption of these dangerous substances.

Many service members who initially commit only minor infractions, such as negligence in duty or violations of curfew, later become involved in narcotics misuse due to factors including social environment, psychological pressure, or inadequate oversight. The case will be discussed in this article.

Based on the foregoing background, the author is motivated to conduct a detailed study of military disciplinary law enforcement and the escalation of disciplinary violations into criminal offences in narcotics cases involving TNI personnel within the specified case mentioned above. A detailed and thorough study is required to determine how the military discipline breach can be escalated into criminal conduct, especially for narcotics offences governed outside the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM).<sup>15</sup>

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<sup>13</sup> Abdul Salam, "Analysis of the Implementation of Rehabilitation and Criminal Dismissal for TNI Personnel for Narcotics Abusers in the Perspective of Justice" 1 (2022).

<sup>14</sup> Indonesia, "Undang Undang Nomor 35 Tahun 2009 Tentang Narkotika," 2009.

<sup>15</sup> Gurning, Zulyadi, and Ramadhan, "Analysis of Law Enforcement on the Case of THTI TNI Soldiers at the Medan Military Court."



This study employs a doctrinal legal research design, often known as black letter methodology,<sup>16</sup> focusing on systematic analysis of legal texts and statutes. Doctrinal research is widely recognized as the predominant method in legal scholarship, aimed at clarifying the content and interrelationships of statutes, regulations and case law through rigorous textual examination. It involves a two part process: locating relevant legal sources and interpreting their content in context.<sup>17</sup>

To operationalize this design, a legal literature review was conducted. Primary sources comprised legislation, judicial decisions, military regulations and procedural codes. Secondary sources included scholarly articles, doctrinal treatises and commentary on military law. Relevant doctrinal scholarship and authoritative texts were identified via searches in legal databases, then appraised for relevance, authority and currency. Each source was coded and synthesized to reveal prevailing interpretations,<sup>18</sup> procedural norms and substantive criteria governing the *Ankum's* decision making and its potential to escalate disciplinary infractions into criminal charges.

This method fosters transparency of legal reasoning and supports rigorous doctrinal analysis. By mapping procedural steps and substantive rules within the Military Discipline Law and Military Criminal Law, the study's findings rest on a solid foundation of established legal doctrine and scholarly consensus, ensuring both validity and reliability in addressing the research questions.

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<sup>16</sup> Simon Waswa, "The Doctrinal Legal Method as A Tool For Determining the Law Governing Use of an International Watercourse: A Critical Analysis of the Icj's Silala Decision," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, February 20, 2024), <https://doi.org/10.2139/ssrn.4807472>.

<sup>17</sup> Susanto, Siregar, and Amal, "Implementation of the Role of Ankum and Papera in the Process of Resolving Military Cases in the Jurisdiction."

<sup>18</sup> Jason N. E. Varuhas, "Mapping Doctrinal Methods," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, April 20, 2022), <https://doi.org/10.2139/ssrn.4087836>.



## THIN LINE BETWEEN MILITARY DISCIPLINE VIOLATION AND MILITARY CRIME THIN LINE BETWEEN MILITARY DISCIPLINE VIOLATION AND MILITARY CRIME

In Indonesia the enforcement of military discipline begins with the identification of conduct that runs counter to the regulations and core values of the armed forces. When a service member fails to comply with orders or breaches established standards of behaviour, the matter is first addressed through an internal disciplinary process. Under the applicable law, minor infractions such as negligence in duty or curfew violations are met with administrative measures. These may include formal reprimands or periods of confinement that, depending on severity, can last up to fourteen days for lighter offences or up to twenty one days where greater gravity is found.

The authority responsible for this initial response is known as the *Ankum*, an acronym for the superior who holds the power to impose punishment. The *Ankum* undertakes a fact finding inquiry to determine whether an infraction has occurred and decides which disciplinary sanction is appropriate. In many cases the *Ankum's* decision is final within the disciplinary sphere. However, this power is not absolute. Where an incident suggests more serious wrongdoing or poses a threat to unit cohesion, the *Ankum* must evaluate whether the infraction contains elements of criminal conduct and, if so, refer the matter into the military criminal justice system.<sup>19</sup>

Once the *Ankum* elects to escalate a case, the procedural focus shifts from internal discipline to formal criminal prosecution under the Military Criminal Code. The first step in this referral is an investigation by the Military Police.<sup>20</sup> Investigators gather evidence,

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<sup>19</sup> Susanto, Siregar, and Amal, "Implementation of the Role of Ankum and Papera in the Process of Resolving Military Cases in the Jurisdiction."

<sup>20</sup> Mayor Chk Edwin, "Soldier Discipline Law: A Study of Military Law and the Crime of Desertion," n.d.

document witness statements and assess any physical or digital materials relevant to the alleged offence. This evidence is then submitted to the Military Prosecutor, who reviews the completeness and legal sufficiency of the file. If the prosecutor finds the material adequate, they prepare a formal case summary and a legal opinion letter indicating the charges to be pursued.

At this stage a case transfer document is issued and signed by the Case Submission Officer. This enables the prosecutor to draft an indictment and file it with the military court. The court then issues summonses and proceeds to hold hearings under the military criminal procedure provisions. Trials are conducted before a panel of judges who hear testimony from both prosecution and defence, consider documentary exhibits and evaluate expert opinions. Should the court find the service member guilty, sentences may include imprisonment, dismissal from service, loss of rank or other supplementary punishments specified by military criminal law.

Throughout this process the role of the *Ankum* continues to be significant. Although the initial disciplinary sanction may fall away, the *Ankum* remains responsible for overseeing that evidence collection and documentation meet legal requirements. Research indicates that variation in commanders' legal training and resources can lead to inconsistent referral decisions. In some units cases are advanced swiftly to court martial when clear evidence of criminal conduct exists. In other units concerns about reputation or cohesion can result in under reporting of serious offences or inappropriately lenient handling.

Legal scholars emphasise that the military criminal system in Indonesia operates as a specialized branch within the broader criminal justice framework. The Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM)<sup>21</sup> is treated as *lex specialis* in relation to the civilian penal code. While core procedural

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<sup>21</sup> Susanto, Siregar, and Amal, "Implementation of the Role of Ankum and Papera in the Process of Resolving Military Cases in the Jurisdiction."

safeguards such as the right to defence and the requirement for proof beyond reasonable doubt are shared, the military code introduces penalties tailored to the needs of an armed force. Examples include compulsory dismissal, demotion and forfeiture of pension rights. These additional sanctions underline the dual aim of safeguarding discipline and protecting national security.

A further complication arises from the human dimension of military life. Service members experience unique pressures such as rigorous training schedules, separation from family and intense hierarchical relationships.<sup>22</sup> Empirical studies have shown that such stressors can precipitate minor disciplinary breaches which, if ignored or poorly managed, escalate into full criminal cases. In particular narcotics misuse has been identified as a gateway from minor infractions to serious offences that compromise operational readiness and institutional integrity.

The Indonesian military justice system rests on a tiered model. Minor breaches are contained within the disciplinary domain where commanders exercise direct authority. More serious or criminal conduct is escalated by the *Ankum* into the criminal justice system, triggering investigative, prosecutorial and judicial steps that culminate in sentencing by a military court. The effectiveness of this model depends on consistent training, robust oversight and a balance between maintaining order and ensuring individual rights. Ongoing scholarship and reform efforts continue to refine the rules and practice, ensuring that discipline law and criminal law work in tandem to uphold both military efficiency and the rule of law.

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<sup>22</sup> Salam, "Analysis of the Implementation of Rehabilitation and Criminal Dismissal for TNI Personnel for Narcotics Abusers in the Perspective of Justice."

## LITERATURE REVIEW

To this present date no study has been published under the similar topic to review the escalation of discipline breach to criminal charge, confirming the originality of the present research. Nevertheless, several relevant works in electronic and library sources are identified.

The first is a 2023 master's thesis by Vindo Montana at the Faculty of Law, University of North Sumatra, entitled "Law Enforcement against TNI Personnel Committing Narcotics Abuse Offenses (Case Study: Military Court Decision I-02 Number 109-K/PM.I-02/AL/XI/2022)."<sup>23</sup> This study examines the legal framework and accountability of TNI members who commit narcotics offenses, and analyses judicial reasoning in Military Court Decision No. 109-K/PM.I-02/AL/XI/2022.

The second is a 2015 undergraduate thesis by Benediktus Sulistyo Hardiyanto at Atma Jaya University Yogyakarta, "Review of Disciplinary Violations by Soldiers in the KOREM 072 Yogyakarta Area."<sup>24</sup> Hardiyanto's research details how KOREM 072 handles offenses such as disobeying orders, imposing penalties that range from reprimands to confinement in accordance with the severity of the breach.

The third is a 2023 journal article by Salmanita Shalsabella Pramudita and Iwan Triadi, "Application of Sanctions for Military Discipline Violations within the Military Justice System."<sup>25</sup> This article explores the resolution of disciplinary offenses under Law No. 25 of 2014 and categorizes types of military discipline violations.

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<sup>23</sup> Vindo Montana, "Penegakan Hukum Terhadap Prajurit TNI Yang Melakukan Tindak Pidana Penyalahgunaan Narkotika (Studi Putusan Pengadilan Militer I-02 Nomor 109-K/PM.I-02/AL/XI/2022)," 2023.

<sup>24</sup> Hardiyanto, "Tinjauan Terhadap Penyelesaian Pelanggaran Disiplin Prajurit Di Lingkungan KOREM 072 Yogyakarta," 2015.

<sup>25</sup> Iwan Salmanita, "Penerapan Sanksi Atas Pelanggaran Hukum Disiplin Militer Dalam Sistem Peradilan Militer," *Jurnal Penelitian Ilmu Ilmu Sosial* 1, no. 5 (2023).

The fourth is a 2018 undergraduate thesis by Erlan Diyo Ibrahim at an unnamed Faculty of Law, "Juridical Analysis of Narcotics Abuse Offenses by Military Personnel (Case Study: Decision No. 108-K/PMI-02/AD/VII/2017)."<sup>26</sup> Ibrahim's work investigates the elements of Article 127(a) of Law No. 35 of 2009 on Narcotics in conjunction with Article 26 of the Military Criminal Code and examines sentencing in Decision No. 108-K/PMI-02/AD/VII/2017.

This study differs from earlier investigations within the field of military law, particularly those addressing disciplinary breaches by Indonesian National Armed Forces personnel. Prior research has generally emphasized the importance of imposing military disciplinary sanctions and the role of military necessity in enforcing order within the TNI. Those analyses have concentrated on the application of positive legal norms as codified in Law Number 25 of 2014 on Military Disciplinary Law. However, they have not addressed instances in which conduct initially sanctioned under the military discipline code subsequently becomes subject to prosecution under the military criminal code. Furthermore, the specific acts examined here do not appear in the Military Criminal Code.

Other studies have focused narrowly on particular categories of infractions, such as narcotics misuse, and have explored only how criminal liability is imposed on individual service members. Their primary concern has been the considerations that influence military judges in sentencing, without investigating how the disciplinary and criminal justice systems might operate in parallel with respect to the same conduct. This oversight suggests that no systematic effort has yet addressed the potential normative dissonance that could undermine criminal law principles such as *ne bis in idem*.

Research to date has also tended to describe the role of the superior with the authority to punish (*Ankum*) in administrative

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<sup>26</sup> Erlan Diyo Ibrahim, "Analisis Yuridis Mengenai Tindak Pidana Penyalahgunaan Narkotika Golongan I Yang Dilakukan Oleh Anggota Militer (Studi Putusan Nomor 108-K/PMI-02/AD/VII/2017)," 2018.

resolution of disciplinary cases within military units, highlighting the need for prompt and decisive action to preserve institutional authority. Yet these studies do not examine the potential misalignment between military administrative sanctions and criminal procedure when applied to identical conduct. In addition, prior work has typically categorized disciplinary breaches only as pure or impure, offering descriptive explanations without exploring the juridical consequences that arise when impure breaches enter the general criminal justice system. There has been no in-depth analysis of how the legal framework can safeguard principles of justice, proportionality, and legal certainty in such circumstances.

Moreover, earlier research has relied largely on descriptive normative methods, lacking a critical analysis of the interaction between the distinct legal systems governing military personnel. No comprehensive study has examined how military disciplinary law may intersect with military criminal law. This investigation will address that omission by explicating the process through which disciplinary sanctions may escalate into criminal prosecution. Consequently, evaluative and solution-oriented perspectives on the military justice system and its relationship to the civilian criminal system have not yet received adequate scholarly attention.<sup>27</sup>

This study seeks to fill these gaps by presenting an integrative and critical approach to the potential normative dissonance in sanctioning military personnel.<sup>28</sup> It contributes to the discourse on reforming the military justice system by incorporating modern criminal law principles and by proposing mechanisms that ensure sanctions are fair, proportional, and measured.<sup>29</sup> In doing so, the

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<sup>27</sup> Nurul Qamar et al., *Metode Penelitian Hukum (Legal Research Methods)* (Makassar: CV. Social Politic Genius, 2017), [https://books.google.co.id/books/about/Metode\\_Penelitian\\_Hukum\\_Legal\\_Research\\_M.html?id=hfacDwAAQBAJ&redir\\_esc=y](https://books.google.co.id/books/about/Metode_Penelitian_Hukum_Legal_Research_M.html?id=hfacDwAAQBAJ&redir_esc=y).

<sup>28</sup> Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Metodologi Riset Hukum* (Surakarta: Oase Pustaka, 2020).

<sup>29</sup> Lisnawaty Badu and Apripari, "Initiating Military Criminal Acts As A Competence Of Military Justice Absolute Incriminal Crime," *Jurnal Legalitas* 12, no. 1 (2019): 57; Herawati



research not only reinforces the normative framework of Law Number 25 of 2014 and other relevant criminal provisions but also tests the boundaries and normative integration of the different legal systems at work within a military organization.<sup>30</sup> This affirms both the originality and urgency of the present investigation, which has not been explicitly addressed in prior scholarship.

## FROM DISCIPLINARY INFRACTION TO CRIMINAL CHARGE

In the case under analysis, an Army member had been using narcotics since 2002 but at that time faced only military disciplinary measures. This reflects an internal approach during that period, with relatively lenient sanctions such as a reprimand, disciplinary confinement of up to fourteen days, or more serious confinement of up to twenty one days. When the same individual was apprehended again in 2022, the legal response was markedly more severe. In addition to criminal prosecution, the member was dismissed from service, and the referral of the disciplinary matter to the military prosecutor fell entirely within the authority of the superior vested with disciplinary power (*Ankum*).

The Supreme Court through Circular Letter No. 3 of 2023 provides guidance on dismissal sanctions. It specifies that the additional penalty of dismissal should not be imposed on service members who are first time users of narcotics and have no prior criminal or disciplinary record. However, in the present case, the individual had been using narcotics since 2002 and reoffended in 2022, thereby failing to meet the exception criteria. Accordingly,

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et al., "Implementasi Kebijakan Undang Undang Republik Indonesia Nomor 25 Tahun 2014 Tentang Hukum Disiplin Militer Di Polisi Militer Daerah Militer II Sriwijaya"; Salam, "Analysis of the Implementation of Rehabilitation and Criminal Dismissal for TNI Personnel for Narcotics Abusers in the Perspective of Justice."

<sup>30</sup> Haryo Sulistiriyanto, "Pertanggungjawaban Pidana Militer Yang Melakukan Tindak Pidana Desersi," *Jurnal Perspektif* 16, no. 2 (2011): 82–93.



dismissal was the logical consequence under the prevailing regulations. If such violations are not addressed promptly, they may escalate into active involvement in narcotics trafficking, a serious crime that carries severe penalties. A major challenge lies in effective enforcement and oversight within the military establishment itself.

The case numbered 17-K/PM.II-11/AD/III/2023 thus warrants a comprehensive study to provide full understanding of the dynamics of military discipline enforcement, particularly the escalation of disciplinary breaches into military criminal offences in narcotics cases, and its implications for Indonesia's military justice system and disciplinary framework. According to Decision No. 17-K/PM.II-11/III/2023, the offender, a member of the Indonesian Army, purchased crystal methamphetamine from an individual known as "T" for 600.000 Rupiahs and consumed it personally. The primary focus of the inclination of disciplinary infraction to criminal charge was purely the play of military system and it ties to the Indonesian legal framework.

Military discipline in Indonesia is governed primarily by Law No. 25 of 2014 on Military Disciplinary Law, which defines disciplinary infractions as any act by a service member contrary to official orders, regulations, or core military values (*Sapta Marga*, *Delapan Wajib TNI*, and *Sumpah Prajurit*). When such an infraction is detected, it is first dealt with under the internal disciplinary system: sanctions range from reprimands to light confinement (max. 14 days) or heavy confinement (max. 21 days).

However, when an infraction is deemed sufficiently serious especially if it threatens unit integrity or involves elements of criminal conduct, the *Ankum* has the authority to refer the case out of the disciplinary channel and into the military criminal justice system. This referral triggers the procedural transition from disciplinary law to military criminal law (*Kitab Undang-Undang Hukum Pidana Militer*,

KUHPM), which carries a wider range of punishments including imprisonment, dismissal from service, and demotion.<sup>31</sup>

In the Indonesian military justice system the transition from a disciplinary infraction to a full criminal prosecution follows a clearly delineated sequence of steps designed to ensure both accountability and due process. This narrative will trace those procedural stages from the moment an alleged breach is detected through to the execution of a military court sentence.

When a service member's conduct appears to contravene established regulations or the core values enshrined in *Sapta Marga*, Eight Obligations of TNI (*Delapan Wajib TNI*), and the Soldier's Oath (*Sumpah Prajurit*) the incident must first be brought to the attention of the immediate superior officer. That officer, known by the legal acronym *Ankum* (*atasan yang berhak menghukum*), holds the authority to initiate a fact-finding inquiry and impose preliminary disciplinary measures within the internal chain of command. For minor breaches such as negligence in duty or curfew violations *Ankum* may elect to issue a formal reprimand or impose disciplinary confinement for up to fourteen days for lighter offences or up to twenty-one days for more serious infractions.

If *Ankum's* investigation uncovers elements suggesting criminal conduct or a threat to unit cohesion such as involvement with narcotics or violence, *Ankum* must refer the case into the military criminal justice system rather than resolve it solely through administrative discipline. That referral marks the formal escalation point: *Ankum* forwards the case to the Military Police (*Polisi Militer*, POM), who act as primary investigators for military criminal offences.

Upon receipt of the referral, the Military Police conduct an in-depth investigation under the procedures set out in the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHP)

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<sup>31</sup> Salmanita Shalsabella Pramudita Triadi and Iwan, "Penerapan Sanksi Atas Pelanggaran Hukum Disiplin Militer Dalam Sistem Peradilan Militer," *Jurnal Penelitian Ilmu-Ilmu Sosial* 245 (2023).

and the Military Justice Act (*UU Peradilan Militer*). Investigators gather witness testimony, secure physical and digital evidence, and compile a detailed report of findings. In the military context POM operates alongside other authorized investigatory bodies, *Ankum* itself and, in certain circumstances, military prosecutors (*Oditur*) ensuring that evidence collection adheres to rigorous legal standards.

Once the investigation phase concludes the case file moves to the office of the Military Prosecutor (*Oditur Militer*).<sup>32</sup> The prosecutor reviews the completeness of the dossier and assesses whether there is sufficient evidence to support criminal charges. If the prosecutor deems the file complete they draft a *Berita Acara Pendapat* or BAPAT,<sup>33</sup> a formal document summarizing witness statements, physical evidence, suspect testimony and the prosecutor's legal conclusions regarding the alleged offence and the applicable article of the Military Criminal Code.<sup>34</sup>

With the BAPAT in hand the prosecutor prepares a Suggestion of Legal Opinion (*Surat Pendapat Hukum*, SPH) addressed to the Case Submission Officer (*Perwira Penyerah Perkara*, Papera). Attached to the SPH is the Skeppera, a decision letter effecting the handover of the case for prosecution. Papera's signature on the Skeppera authorizes the military prosecutor to proceed with drafting a formal indictment.<sup>35</sup>

Following the issuance of the indictment the prosecutor files it with the appropriate Military Court. The court registry issues summonses for the defendant and any witnesses, setting the dates for the trial. At this juncture the matter is formally before a panel of

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<sup>32</sup> Wau, "Crimination of Acts of Violence Which Performed Arbitrarily for Superiors Against Underboards in the Military Environment."

<sup>33</sup> Edwin, "Soldier Discipline Law: A Study of Military Law and the Crime of Desertion."

<sup>34</sup> Pribadi and Sumpono, "Implementasi Penegakan Hukum Pidana Terhadap Oknum TNI Yang Memfasilitasi Pelaku Tindak Pidana Narkotika Berdasarkan Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer."

<sup>35</sup> Edwin, "Soldier Discipline Law: A Study of Military Law and the Crime of Desertion."

military judges, who will conduct hearings in accordance with the Military Criminal Procedure Code. The hearing process mirrors civilian criminal trials in its basic contours opening statements, witness examinations, presentation of exhibits, defence pleadings and closing arguments while operating at an expedited pace to maintain operational readiness.

During the trial the court carefully balances two imperatives: upholding strict military discipline and safeguarding the rights of the accused. Judges weigh the gravity of the misconduct against any mitigating circumstances such as the service member's length of service, personal background or signs of coercion before determining an appropriate sentence. Sentences under the Military Criminal Code can include imprisonment, dismissal from service, reduction in rank, forfeiture of pension rights or other ancillary punishments tailored to preserve the hierarchical integrity of the armed forces.

When the court renders a final and binding verdict the prosecutor must oversee execution of the sentence. Imprisonment terms are carried out in Military Correctional Institutions (*Lembaga Pemasyarakatan Militer*), while administrative sanctions such as dishonourable discharge are formally recorded and implemented by the relevant personnel office. Throughout this phase *Ankum's* role persists in a supervisory capacity, ensuring that the ruling is enforced correctly and that any further disciplinary ramifications within the unit are managed appropriately.<sup>36</sup>

Despite the clear procedural framework, studies have highlighted that disparities in legal training, resource availability and informal pressures within units can affect the consistency of referrals and prosecutions. Commanders with robust legal understanding and support tend to advance serious cases swiftly to criminal court, whereas others may resolve borderline offences internally to protect unit reputation. Recent reforms aim to mitigate these variations through enhanced commander education, standardized referral

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<sup>36</sup> Edwin.

guidelines and a unified digital case-management system under the Supreme Court's one-stop justice initiative.<sup>37</sup>

The procedural steps in escalating a disciplinary breach to criminal prosecution in Indonesia's military justice system reflect a tiered approach. Initial infractions are contained within *Ankum's* disciplinary purview. Cases meriting criminal adjudication progress through Military Police investigation, prosecutorial review via BAPAT, SPH and Skeppera, indictment and trial before a military court, concluding with sentence execution. Each stage embeds checks to balance order and fairness, and ongoing reforms seek to bolster transparency, legal consistency and respect for individual rights across the military justice process.

## PROSECUTING NARCOTICS CRIME IN INDONESIAN MILITARY SYSTEM

Under Article 1 of the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM), a clear hierarchy of legal norms governs offences committed by service members.<sup>38</sup> The provision stipulates that where the KUHPM itself does not provide a specific rule, the general criminal law applies, including relevant chapters of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) and the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP). This integration ensures that military justice draws upon both special military statutes and the broader legal framework that governs civilian offences.<sup>39</sup>

First, military law encompasses offences that arise from the unique duties and structure of the armed forces. The KUHPM defines

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<sup>37</sup> Susanto, Siregar, and Amal, "Implementation of the Role of Ankum and Papera in the Process of Resolving Military Cases in the Jurisdiction."

<sup>38</sup> Sarayar, "Jenis Jenis Pidana Dan Pelaksanaan Pemidanaan Dalam Hukum Pidana Militer."

<sup>39</sup> Faizal Akbar Sutarto, "Eksistensi dan Penerapan Pidana Pemecatan dari Dinas Militer sebagai Pidana Tambahan dalam Perspektif Hukum Pidana Khusus," n.d.

military offences such as desertion, insubordination and failures to obey orders. These rules maintain cohesion and discipline within the ranks. In parallel, special statutes address particular subject matter. Most notably Law Number 35 of 2009 on Narcotics defines offences ranging from simple possession to high-level trafficking of controlled substances. A service member found with a Class I narcotic may thus face charges under the specific narcotics law even as the KUHPM provides the procedural vehicle for trial and punishment.<sup>40</sup>

Second, the KUHPM's Article 1 incorporation of general criminal law means that procedural safeguards and substantive definitions from the KUHP and KUHP govern military proceedings wherever the military code is silent or where civilian norms are directly invoked. As a result service members accused of drug offences benefit from the same rights afforded to civilian defendants. These include the presumption of innocence the right to counsel and strict rules on evidence collection and chain of custody. Military Police investigators must therefore obtain search and seizure authorizations consistent with KUHP standards and document chain of custody for narcotics samples as they would in a civilian context.<sup>41</sup>

The narrative of a narcotics prosecution within the military thus unfolds through intersecting legal layers. Upon detection of a violation the *Ankum* or superior with authority to punish consults military disciplinary regulations and may impose immediate administrative sanctions. If the facts suggest criminal conduct or repeat offences the *Ankum* refers the matter to the Military Police. Investigators then operate under both KUHPM and KUHP to gather testimony physical evidence and forensic analyses. The dossier moves to the Military Prosecutor who applies KUHPM rules on case transfer and indictment drafting, while citing Law No. 35 of 2009 for narcotics

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<sup>40</sup> Pribadi and Sumpono, "Implementasi Penegakan Hukum Pidana Terhadap Oknum TNI Yang Memfasilitasi Pelaku Tindak Pidana Narkotika Berdasarkan Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer."

<sup>41</sup> Sutarto, "Eksistensi dan Penerapan Pidana Pemecatan dari Dinas Militer sebagai Pidana Tambahan dalam Perspektif Hukum Pidana Khusus."



elements and invoking KUHP definitions of possession or distribution as incorporated by Article 1 of the KUHPM.

At trial the Military Court sits under KUHPM but conducts open hearings consistent with Article 21 of Law No. 31 of 1997 on Military Courts. Judges admit evidence according to reliability and relevance standards from KUHP and KUHPM.<sup>42</sup> Convictions for narcotics typically yield combined sanctions: imprisonment and fines under the narcotics statute plus additional military penalties such as dismissal or rank reduction authorized by Article 6 of the KUHPM.

By bridging military specific offences and common criminal rules Article 1 fosters coherence and fairness. It prevents gaps in the law while preserving the specialized character of military justice. Service members thus face a system that applies modern criminal law principles of legality proportionality and due process even as it enforces the strict discipline essential to national defense.

## CONCLUSION

This study has shown that the Indonesian military justice system functions along a continuum in which breaches of disciplinary law may be elevated into formal criminal proceedings under specific circumstances. This elevation is initiated by the *Ankum*, the superior vested with punitive authority, who assesses whether the factual record established by a disciplinary tribunal contains elements of criminality warranting referral. The process unfolds through stages of fact finding, investigation by the Military Police, prosecutorial review via the *Berita Acara Pendapat* and *Surat Pendapat Hukum*, formal case transfer through the *Skeppera*, indictment drafting, trial before military courts, and sentencing that may include imprisonment,

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<sup>42</sup> Aulia Jihan Rifani and Satria Unggul Wicaksana Prakasa, "Independensi Peradilan Militer Terhadap Prajurit TNI Sebagai Pelaku Tindak Pidana Narkotika," in *Audito Comparative Law Journal (ACLJ)*, vol. 2, 2021, 131-42, <https://doi.org/10.22219/aclj.v2i3.16756>.



dismissal from service and rank reduction. The analysis highlights that inconsistencies in commanders' legal training, resource constraints and informal pressures can hinder uniform application of referral criteria and compromise both accountability and fairness. To address these challenges, the study recommends enhanced legal education for *Ankum* and Military Police personnel, clear quantitative and qualitative thresholds for narcotics related referrals, and adoption of a unified digital case management system to ensure transparency and procedural integrity across all stages.

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