

RESOLUTION OF THE MILITARY CRIMINAL ACT OF DESERTION DURING PEACETIME COMMITTED BY TNI AD SOLDIERS IN THE ISKANDAR MUDA REGION

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ABSTRACT

The crime of desertion is a purely military crime committed by a soldier because it is against the law and contrary to the Law. The problem in this thesis is how to regulate the legal act of military desertion committed by Indonesian Army soldiers in the Iskandar Muda Military Command area, what is the form of legal accountability for Indonesian Army soldiers who commit the crime of desertion in the Iskandar Muda Military Command area, what are the obstacles and efforts to resolve cases of desertion committed by Indonesian Army soldiers in the Iskandar Muda Military Command area. The legal provisions for the military crime of desertion committed by Indonesian Army soldiers in the Iskandar Muda Military Command area are regulated in Articles 87 and 89 of the Military Criminal Code, while regarding the crime of desertion in absentia examination is regulated in Article 141 paragraph (10) and Article 143 of Law Number 31 of 1997 concerning Military Justice. Criminal liability, TNI members who commit crimes are the main punishment consisting of the death penalty, imprisonment, and additional punishment consisting of dismissal from military service, demotion, revocation of certain rights.

1. Introduction

Law is believed to be a tool to provide equality and certainty in social interactions. Like any tool, law is needed when extraordinary needs or circumstances arise in society. An act is not considered a crime unless it is expressly stipulated in the Criminal Code (KUHP) or other criminal provisions. This principle remains the foundation for ensuring legal certainty.

Law enforcement against criminals is crucial for maintaining order in society. Crime in society is a social phenomenon that every individual, society, and even the state will continually face. Reality has proven that crime and violations can only be prevented and reduced, but they are difficult to eradicate completely. Anticipation of these crimes and violations includes the effective and appropriate use of criminal law instruments through law enforcement.

Although soldiers are citizens of the Republic of Indonesia, they do not constitute a separate class. Every soldier is also considered a member of the general public.



Due to the Armed Forces' obligation to be the core of national defense, a more disciplined system of order is required within the institution, making it seem like a distinct group to achieve and carry out its primary objectives and duties. Therefore, special laws and a separate judiciary, separate from the general judiciary, are required. This specialization stems from the fact that military personnel are a distinct entity from the general public.

To examine and decide a case, the general criminal law that applies to everyone also applies to every military member. However, for the military, there are provisions that deviate from those in the Criminal Code. These special provisions are regulated in the Military Criminal Code. In other words, if the crime committed is not regulated in the Military Criminal Code, the Criminal Code applies unless there is a deviation.

Legally, military personnel have the same standing as ordinary members of the general public. This means that as citizens, all applicable laws apply to them, including criminal law, civil law, criminal procedure, and civil procedure. The difference is that more specific, stricter and more severe regulations are still needed for military personnel. This is because some acts that can only be committed by soldiers are inherently military and do not apply to the general public, for example: refusing service orders, disobeying orders from superiors (insubordination), and desertion.

The criminal acts mentioned above reflect the nature of a military individual who disregards the ethics and disciplinary rules applicable within the Indonesian National Armed Forces (TNI). A soldier should remain with his unit continuously throughout his service and must not refuse, let alone disobey, orders. If he wishes to leave the unit for any reason, he must first obtain permission in accordance with applicable TNI regulations.

It is an absolute requirement in military life to adhere to TNI regulations and service orders from every superior to uphold a military life full of high consciousness. Violating these rules demonstrates a military that is not good and irresponsible in upholding the Sapta Marga (Soldier's Sapta Marga) and the Soldier's Oath. Persistence will only shake the foundations of discipline and order within the TNI. Some serious acts, if committed by military personnel in certain areas, are considered too lenient under general criminal law, as the military, a small segment of society, already has separate judicial provisions, namely military courts or military courts.

One of the most common crimes committed within the Indonesian National Armed Forces (TNI) is desertion, where a TNI soldier withdraws from performing his or her duties. Before a person is brought to trial for desertion, a military

prosecutor or military prosecutor is authorized to act as public prosecutor, having the duty and authority to prosecute criminal cases.

2. Research Method

The type of legal research used is normative juridical, supported by empirical juridical research. Normative juridical research is research that places norms as the object of research, whether legal norms in legislation or legal norms derived from a law. It is also called doctrinal legal research, which uses secondary data. Normative legal research is known as qualitative legal research.

This research is descriptive and analytical, that is, research that describes, examines, explains, and analyzes laws and regulations related to the research objectives. The purpose of descriptive research is to accurately describe the characteristics of individuals, circumstances, phenomena, or specific groups, or to determine the frequency or distribution of a phenomenon or the frequency of certain relationships between a phenomenon and other phenomena in society. The primary purpose of analyzing legal materials is to understand the conceptual meaning of the terms used in the laws and regulations, as well as to understand their application in practice.

Data collection is a crucial stage in the research process, as data constitutes the source of the research. Data collection focused on the underlying issues, ensuring that the research did not deviate or create ambiguity in its discussion. Data collection in this study utilized primary and secondary data.

3. Research Results And Discussion

The threat of the crime of desertion is regulated in Article 87 paragraphs (2) and (3) of the Criminal Code (KUHP). Article 87 paragraph (2) of the KUHPM carries a maximum prison sentence of 2 (two) years and 8 (eight) months for desertion committed during peacetime, and Article 87 paragraph (3) of the KUHPM carries a maximum prison sentence of 8 (eight) years and 6 (six) months for desertion committed during wartime. Therefore, the criminal process for desertion is criminal, as the penalty carries a sentence exceeding 3 months. For TNI soldiers who commit minor crimes, their cases can be resolved through military disciplinary law.

Crime is a human problem that is a social reality, the causes of which are poorly understood because studies have not been carried out in the appropriate proportions and dimensions. The development or increase in crime, as well as the decline in the quality and quantity of crime, whether in large cities or in rural



areas, is relative and interactive in nature. It is understood that crime is the shadow of civilization, and some theories even suggest that crime is a product of society.

W.A. Bonger defines crime as a highly antisocial act that is consciously challenged by the state in the form of suffering (punishment and action). Andi Hamzah stated that the factors that may influence someone to commit a crime can be broadly divided into two. The first factor is within the perpetrator, and the second factor is external to the perpetrator, namely members of society or the people around them (environmental factors).

Physical growth and aging also determine the likelihood of a crime. From childhood to old age, a person undergoes physical and mental changes and development. In criminology, scholars have conducted investigations and found that individuals commit specific crimes at each age level. This is evidenced by cases of desertion within the Indonesian National Armed Forces (TNI), where the perpetrators are usually mostly teenagers/young adults.

The perpetrators perceive that the operational tasks they are assigned to carry out are not beneficial to them, such as their duties to eradicate rebel groups and secure conflict areas. He believed the assignment would endanger him, so he took a shortcut by fleeing his unit. Regarding inappropriate assignments, soldiers are usually assigned to one assignment and, once they feel comfortable, are then transferred to a new, unsuitable assignment, ultimately leaving them without their assigned position.

One of the most common crimes committed within the Indonesian National Armed Forces (TNI) is desertion. This crime is regulated under Article 87 of the Military Criminal Code (KUHPM). To resolve criminal offenses within the TNI, regulations are needed to achieve a unified approach among officials authorized to resolve criminal cases within the TNI. Therefore, TNI Commander Regulation No. Perpang/4/IV/2007 was issued concerning the appointment of case-handling officers within the TNI.

In criminal case investigations, there are three types of procedures: regular examination procedures, expedited examination procedures, special examination procedures, and connectivity examination procedures. Expedited examination procedures are used to examine traffic and road transportation cases. A special hearing is a hearing before a Military Court of Combat, which is the court of first and final instance for criminal cases committed by soldiers in combat zones, for which only a cassation appeal can be filed.

During court hearings, the judge is free to determine who will be questioned first. In principle, court hearings are open to the public, except for morality cases,



which are closed. In principle, the court convenes with a panel of judges, except in expedited hearings. For certain military crimes, the Military Criminal Procedure Code recognizes trials in absentia, specifically for desertion cases. This relates to the command's interest in unit readiness, so the unlawful absence of a soldier requires an immediate legal determination.

After the military court receives the case file transfer from the Military Auditorate, the Chief of the Military Court immediately reviews it. This is to determine whether the case falls within the jurisdiction of the court under his/her jurisdiction. The transfer of the case itself is effective from the date the case file is received and registered by the court.

The Chief of the Court then appoints a panel of judges to hear the case. The appointed presiding judge then reviews the case file and sets a trial date. To that end, he ordered the prosecutor to summon the defendant and witnesses to attend the scheduled hearing. Once the case files are submitted to the court and registered, the authority to detain the defendant shifts to the court.

As one of the bodies implementing judicial power under the Supreme Court, the Military Court's position is equal to other courts such as general courts, religious courts, state administrative courts, and the Constitutional Court, as stated in Article 48 of Law Number 48 of 2009. This is different according to Article 8 paragraph (1) of Law Number 31 of 1997 concerning Military Courts, the Military Court is the body implementing judicial power within the Indonesian National Armed Forces (TNI). Initially, the organizational development and administrative and financial procedures of the Military Court were under the TNI Commander. However, since 2004, it has been transferred under the Supreme Court, except for military personnel, whose personnel development remains under the TNI Commander.

Reviewing the provisions of Law No. 31 of 1997 concerning Military Justice, the initial impression is that the courts within the Military Justice system, including the Military Court, the High Military Court, the Main Military Court, and the Military Combat Court, appear to be organizations under the TNI Commander. This has led to widespread stigma that Military Justice is a system of impunity, unfairness, and synonymous with the interests of units and superiors.

Although the courts within the Military Justice system are under the Supreme Court, their existence cannot be separated from the interests of both national defense and the military itself. Although the provisions governing the courts within the Military Justice system have not been replaced, as the Draft Law on Military Justice has not yet been successfully passed into law, the implementation of the courts' powers within the Military Justice system is entirely based on the



rules and regulations applicable to the judiciary in general. Although the provisions of Article 8 paragraph (1) of Law No. 31 of 1997 concerning Military Justice have not been revoked or amended, in practice, Military Justice is guided by the under-the-roof operation under the Supreme Court.

Provisions regarding other institutions whose functions relate to judicial power are regulated by law. The Military Audit Office is an institution or body that implements state government authority in the areas of prosecution and investigation within the Indonesian National Armed Forces (TNI) based on delegation from the TNI Commander. In conducting prosecutions, the Military Audit Office is unified and inseparable. This is to maintain a unified policy in the area of prosecution, so that it can display distinctive characteristics that are integrated into the thinking, conduct, and work procedures of the Military Audit Office.

In the technical and supervisory areas, the Military Audit Office is carried out by the TNI Audit Office General. Specifically, Law No. 31 of 1997 concerning Military Justice does not specify that the Military Audit Office is subordinate to the Attorney General of the Republic of Indonesia. Rather, the meaning of the Military Audit Office being subordinate to the Attorney General of the Republic of Indonesia is based solely on the explanation of Article 57 paragraph (1) of Law No. 31 of 1997 concerning Military Justice. The duties and authorities granted to the Military Audit Office are based on delegation from the TNI Commander, taking into account the interests of national defense.

Considering the provisions of Law No. 31 of 1997 concerning Military Justice, the position of the Military Auditorate, although organizationally under the Indonesian National Armed Forces (TNI), its authority is based on the delegation of authority from the TNI Commander. However, because the Military Auditorate and the TNI General Auditorate function in carrying out prosecutions for and on behalf of the community, government, and the State, the position of the prosecution institution (the Military Auditorate and the TNI General Auditorate) needs to be examined.

From a justiciable perspective, Military Criminal Law (in both material and formal sense) is part of positive law, which applies to the justiciability of military justice, which determines the basis and regulations regarding actions that are prohibited and mandatory and for violators are threatened with criminal penalties. It determines in what cases and when violators can be held accountable for their actions and also determines the method of prosecution, sentencing, and implementation of criminal penalties, in order to achieve justice and legal order.



An important note regarding the above definition is that it is based on who the criminal law applies to. Therefore, it does not base it on what criminal law applies to the justiciable. In other words, when viewed from a justiciable perspective, in this case the military (and those equated), military criminal law is a criminal law that specifically applies to the military (and those equated) in addition to other criminal laws (general and special in the sense of the first division).

From this description, it is easy to understand that because what applies to a military person (or justiciable in military justice) is not only military criminal law, but also general criminal law and the provisions of general criminal law (which are essentially also used by military criminal law with some exceptions), law enforcers, especially those involved in military justice bodies, must master both general criminal law and military criminal law.

The military, as the subject of a military person's criminal acts, is also the subject of general criminal acts and also the subject of military criminal acts. In the event of a mixed military crime (*gemengdemilitairedelict*), the military is simultaneously subject to both a general crime and a concurrent military crime (*eendaadsesamenloop, concursusideal*).

Considering the provisions of Article 1 Paragraph (2) of the Criminal Code, which in principle requires the application of criminal provisions that are favorable to the suspect, in the aforementioned case, the application of general crimes with lighter criminal penalties is certainly desired. However, Article 63 of the Criminal Code stipulates otherwise: the application of the most severe basic criminal provisions (the first paragraph), or the application of special criminal provisions (the second paragraph). Because the reason for writing the Criminal Code specifically (separately) is, among other things, the aggravation of criminal penalties, in the event of a mixed military crime, the criminal provisions contained in the Criminal Code, in accordance with the provisions of Article 63 of the Criminal Code, are applied.

Investigation, as one of the functions within the criminal justice system's rotating mechanism, is regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code and Government Regulation Number 58 of 2010 concerning Amendments to Government Regulation Number 7 of 1983 concerning the Implementation of the Criminal Procedure Code.

Implementation of cases subject to investigation involves a preliminary examination, which is conducted before a case is heard in court. The case is then investigated and examined by the police. The emphasis of the investigation is placed on "seeking and gathering evidence" to clarify the crime and to identify and determine the perpetrator.



The definition of an investigation, according to Article 1, point (16) of Law Number 31 of 1997 concerning Military Justice, is a series of actions by investigators of the Armed Forces of the Republic of Indonesia, in the manner and according to the procedures stipulated in this law, to seek and collect evidence that will shed light on the crime that occurred and to identify the suspect. Article 69 Paragraph (1) of Law Number 31 of 1997 concerning Military Justice states that investigators are the superiors authorized to punish (Ankum), the Military Police (POM), and the Military Auditor.

4. Conclusion

The legal provisions for the military crime of desertion committed by Indonesian Army soldiers within the Iskandar Muda Military Regional Command (Kodam Iskandar Muda) are regulated in Articles 87 and 89 of the Military Criminal Code. Meanwhile, the crime of desertion during an in-absentee examination is regulated in Article 141 Paragraph (10) and Article 143 of Law Number 31 of 1997 concerning Military Justice. The crime of desertion itself is a pure crime committed by a military soldier where a soldier leaves the unit for more than thirty consecutive days without valid permission from an authorized superior.

The form of legal accountability for Indonesian Army soldiers who commit the crime of desertion within the Iskandar Muda Military Regional Command (Kodam Iskandar Muda) is closely related to the imposition of criminal penalties as legal sanctions against the perpetrators of the crime. Various The criminal penalties for desertion cases are the main penalties consisting of the death penalty, imprisonment, and additional penalties consisting of dismissal from military service, demotion, revocation of certain rights.

Obstacles to the resolution of cases of desertion crimes committed by Indonesian Army soldiers in the Iskandar Military Command area are generally due to the fact that investigations conducted by Military Police investigators often do not meet formal and material requirements, and the role of the Military Auditor in processing cases of Indonesian Army, Indonesian Navy and Indonesian Air Force soldiers is less than optimal, and additional investigations conducted by the Military Auditor are often not carried out because the suspect/witness is undergoing education, operational duties, transfers, and others. Efforts made are preventive efforts, namely tightening supervision of absences in soldier roll calls, holding positive activities outside of duty hours and repressive efforts, namely through law enforcement efforts that can be imposed on the perpetrator or defendant, the handling process of which can be through military criminal law



which is taken through military justice or through military disciplinary law and can be followed by disciplinary action.

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