



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.

In practice, not only civilians can fall prey to criminal acts, but also members of the Indonesian National Armed Forces (TNI). This is regrettable, considering that the TNI's primary function is national defense and security. In the military, a soldier's obedience and compliance in carrying out their duties, as defined by the Sapta Marga (Sword of Honor) and the Soldier's Oath, are closely linked. Based on the Soldier's Oath, every member of the Indonesian National Armed Forces (TNI) must obey the law and uphold military discipline.

When examining and deciding a case, the general criminal law that applies to everyone also applies to every member of the military. However, within the military, there are provisions that deviate from the provisions of the Indonesian Criminal Code. These specific 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.

The criminal acts mentioned above reflect the nature of a military officer who disregards the ethics and disciplinary laws and regulations applicable within the TNI. A soldier should remain with his unit continuously throughout his service and must not refuse, let alone disobey, official orders. If he wishes to leave the unit for any reason, he must first obtain permission in accordance with applicable TNI regulations. In an effort to support and ensure the implementation of the TNI's important roles and duties, in addition to general regulations, specific regulations applicable to TNI members have been enacted. These specific regulations, which apply only to TNI members, are known as military law. Similarly, in the field of criminal law, specific regulations for TNI members, known as military criminal law, have been established and enforced.

One of the most frequently committed crimes within the TNI is desertion, where a TNI soldier withdraws from performing his or her official duties. To prosecute perpetrators of desertion before they are handed over to the court, the Military Prosecutor (MRP) 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. Normative juridical research is research that places norms as the object of research, whether legal norms in legislation or legal norms derived from a statute. 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 data source in this research is secondary data. Secondary data is data that supports and corroborates primary data. Secondary data includes official documents, books, research results in the form of reports, diaries, and so on related to this research.

The data collection technique used is library research, which involves collecting data through a review of secondary literature, as described above. This library research seeks out concepts, theories, opinions, or findings closely related to the main problem.

3. Results And Discussion

Results

The development or increase in crime, as well as the decline in the quality and quantity of crime, both in large cities and 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.

The households/families of these perpetrators are usually discordant, with frequent conflicts and quarrels, perhaps due to unpaid debts within the household/family. The family environment is the most important factor in shaping a person's character and personality, which serve as a benchmark for socializing outside their environment. However, if this environment does not function properly, it can lead a person to commit acts and behave outside of the norms of society and those established by officers.

Similarly, desertion, rifts in the household and disharmony in individual relationships within the family can lead a soldier to desert, refusing to carry out his duties as a TNI soldier.

This is often more related to family finances, especially if a soldier has mounting debts, causing stress. It's well known that crime stems from poverty. When someone lives in poverty, they will resort to any means to meet their basic needs.





Being a TNI soldier is synonymous with living hand-to-mouth. The salary received by TNI soldiers is usually modest, sufficient for daily needs, not enough for other needs such as children's education. Consequently, fathers often rack their brains to find additional income to support the family. This causes the perpetrator to neglect his duties and obligations as a soldier. This crime of desertion is often committed at the non-commissioned officer (NCO) level and below. The lower a soldier's rank, the more likely it is that their family's well-being will be diminished.

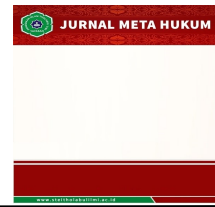
During court hearings, the judge is free to determine who will be questioned first. Court hearings are generally open to the public, except for cases of morality, when the hearings are closed. In principle, the court convenes with a panel of judges, except in expedited hearings. For certain military crimes, Military Criminal Procedure Law recognizes trials in absentia, specifically for desertion cases. This relates to the command's interest in unit readiness, so the unauthorized absence of a soldier requires immediate legal determination.

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. To maintain unity of policy in the field of prosecution, it can display distinctive characteristics that are integrated into the thinking, behavior, and work procedures of the Military Audit Office.

In the technical field of judicial and oversight for the Military Auditorate, it is carried out by the TNI Auditor General. Specifically, Law No. 31 of 1997 concerning Military Justice does not state that the Military Auditorate is under the Attorney General of the Republic of Indonesia, but the meaning of the Military Auditorate under the Attorney General of the Republic of Indonesia is only based on the explanation of Article 57 paragraph (1) of Law No. 31 of 1997 concerning Military Justice. Meanwhile, the duties and authorities obtained by the Military Auditorate are based on delegation from the TNI Commander, with due regard for the interests of the implementation of national defense.

By paying attention to the provisions of Law No. 31 of 1997 concerning Military Justice, the position of the Military Auditorate, although organizationally under the TNI, its authority is based on delegation from the TNI Commander, however, because in terms of function the Military Auditorate and the TNI Auditor General in carrying out prosecutions act for and on behalf of the





community, government and the State, the position of the prosecution institution (Military Auditorate and the TNI Auditor General) needs to be studied.

4. Discussion

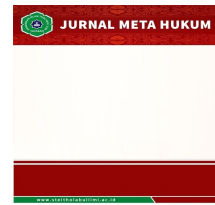
Criminal liability for military personnel who commit crimes can be resolved through disciplinary law or through the imposition of criminal sanctions through Military Court. Military disciplinary punishment is an educational measure for a sentenced military personnel, intended as a form of military development (discipline). Military punishment, on the other hand, is more of a combination of military education and deterrence, as long as the convict is not dismissed from military service.

In practice, this punishment of demotion is rarely applied, as it is perceived as unfair and serves little benefit in the context of military development, especially for high-ranking non-commissioned officers and officers. It also involves the revocation of the rights stipulated in Article 35 Paragraph (1) Numbers 1, 2, and 3 of the Criminal Code. First, the right to hold office in general or specific positions is revocation of the right to hold office. Before rendering a verdict, the Panel of Judges must carefully assess and consider the strength of the evidence presented during the trial.

Furthermore, the Panel of Judges' goal in imposing penalties is not merely to punish those guilty of committing crimes, but also to educate them so they can repent and return to the right path, becoming good citizens and soldiers in accordance with the philosophy of Pancasila and the Sapta Marga.

When imposing the additional penalty of dismissal from military service, it is best to include the revocation of the person's right to join the armed forces. Failure to do so would raise concerns that the person, after being discharged from one branch, will likely rejoin another. Such a dismissal, according to law, results in the loss of all rights acquired in the armed forces during their previous service. The military judge deems the imposition of a penalty of dismissal in addition to the principal penalty inappropriate for maintaining military life. Failure to impose a penalty of dismissal in addition to the principal penalty raises concerns that the convict's presence in the military after serving his sentence will disrupt the foundations of social order. In practice, this demotion is rarely implemented, as it is perceived as unfair and serves little purpose in military development, particularly for high-ranking non-commissioned officers and officers.





From a justiciable perspective, military criminal law (in both the material and formal sense) is part of positive law, applicable to the justiciable military courts. It establishes the principles and regulations regarding prohibited and mandatory actions, and the penalties for violators. It determines the circumstances under which and when violators can be held accountable for their actions. It also determines the method of prosecution, sentencing, and execution of sentences, 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. It does not, therefore, base on which criminal laws apply to the justiciable. In other words, if viewed from a justiciable perspective, in this case the military (and those equated), then military criminal law is one of the criminal laws that specifically applies to the military (and those equated) in addition to the application of other Criminal Laws (general and special in the sense of the first division).

The act was inappropriate for the Defendant because the Defendant's act of leaving the unit without valid permission from the unit commander is strictly prohibited in the TNI soldier environment, moreover the reason the Defendant left the service was because he had family problems and had many debts and was afraid that the people who gave him debts would report the Defendant's actions to the unit, this proves that the Defendant is not a responsible person and as a result of the Defendant's actions, he neglected the duties that were his responsibility in the unit which directly or indirectly affected the implementation of the unit's main tasks, in addition, the Defendant's actions could damage the joints of discipline in his unit.

From this description, it is easy to understand that because what applies to military personnel (or military justice justiciable) is not only military criminal law, but also general criminal law and the provisions of general criminal law (which are essentially also applied to 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 act, is both the subject of general criminal acts and the subject of military crimes. In the event of a mixed military crime (*gemengdemilitairedelict*), the military is simultaneously the subject of both general criminal acts and concurrent military crimes (*eendaadsesamenloop, concursusidealis*).

Investigations and inquiries are paramount in the judicial system's mechanisms. Therefore, they are regulated by Law Number 8 of 1981 concerning the Criminal

Procedure Code, often referred to as the Criminal Procedure Code. An investigation functions to find and identify an event suspected of being a crime, while a preliminary investigation functions to shed light on a criminal case by gathering available evidence to identify the suspect.

The Criminal Procedure Code (KUHAP) states that "an investigator or inquirer comes from the Indonesian National Police." However, currently, crimes are not only committed by members of the general public, but also by members of the military. Military members, like other citizens, have legal standing and are obliged to uphold the law.

Investigations of suspects who are members of the military are subject to Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice. The terms "investigator" and "investigator" are not differentiated, but the Military Criminal Procedure Code (HAPMIL) does not mention investigators and investigations because HAPMIL does not differentiate between investigators and investigations, as stipulated in Article 1 Paragraphs (4) and (5) of the KUHAP. Investigators referred to in the Military Criminal Procedure Code (HAPMIL) are Superiors with the Right to Punish, Military Police, and Military Prosecutors. Military Criminal Law and Military Criminal Procedure Law are special laws, referred to as special laws to distinguish them from General Criminal Procedure Law, which applies to everyone.

Law enforcement in military organizations is a command function and is one of the responsibilities of the command as the decision-maker. It is imperative for commanders at every unit level to closely monitor the legal awareness and discipline of TNI soldiers under their authority. It is also important to note that the concept of awarding and imposing sanctions must be strictly implemented in relation to the implementation of law enforcement functions. Awards should be based on successful performance within the scope of duties, not on other aspects that are far from professionalism. Conversely, TNI soldiers who are deemed unprofessional, experience frequent failures in carrying out their duties, are slow in their performance, or have low discipline, resulting in unlawful acts, should be subject to sanctions. These sanctions must be implemented firmly and, if necessary, announced to their surrounding environment to serve as an example.

5. Conclusion

The legal provisions for resolving military desertion cases committed by TNI soldiers are regulated in Articles 87 and 89 of the Military Criminal Code, while the crime of desertion during an in-absentia trial 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 criminal liability of TNI members who commit the crime of desertion is closely related to the imposition of criminal penalties as legal sanctions against the perpetrator. The various types of penalties imposed for desertion cases include the main penalty, which consists of the death penalty, imprisonment, and additional penalties, which include dismissal from military service, demotion, and revocation of certain rights. The punishment for TNI members who committed the crime of desertion in the decision of the Military Court II-08 Jakarta Number 31-K / PM II-08 / AD / 1 / 2022 is the defendant, namely Donny Efnasus Nubatonis, Kopda NRP 31020752271280 who was legally and convincingly proven guilty of committing the crime of desertion during peacetime was punished with the main penalty of imprisonment for 1 (one) year and an additional penalty of dismissal from military service.

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