



**Legal Analysis of TNI Soldiers Who Commit the Criminal Act of
Desertion in Their Jurisdiction TGKH. M. Zainudin Abdul Madjid Air
Force Base
(Case Study of Decision Number 23-K/PM.III-14/AU/IV/2024 &
Decision Number 25-K/PM.III-14/IX/2022)**

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Abstract

The Indonesian National Army (TNI) is part of Indonesian society that is trained and educated to maintain the integrity of the Republic of Indonesia. TNI has a life guideline in carrying out its official life, namely Sapta Marga and the Soldier's Oath to improve discipline in the TNI's official life. However, TNI members are only ordinary people, not free from mistakes and actions related to crime. One of them is the crime of desertion during peacetime. The crime of desertion during peacetime is a crime committed by military members by mistake or intentionally being absent without permission for 30 days. This type and research is a qualitative analysis research using primary data in the form of interviews and secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research are to examine the problems and find answers regarding legal policies, law enforcement and future regulations regarding the crime of desertion during peacetime committed by military members in the regionlaw of TGKH Air Force Base. M. Zainudin Abdul Madjid with a case study of Judge's Decision Decision Number 23 K/PM.III-14/AU/IV/2024 & Decision Number 25-K/PM.III-14/IX/2022

Keywords: *desertion in peacetime, Indonesian national army, criminal law enforcement*

INTRODUCTION

The crime of desertion is one of the serious violations committed by military personnel, including in the Indonesian National Armed Forces (TNI). Desertion is the act of leaving military duties or obligations without permission from superiors, which can have a significant impact on stability and discipline in military units. In the context of military law in Indonesia, regulations related to the crime of desertion have been regulated in the Military Criminal Code (KUHPM). However, the implementation of laws related to this crime often faces various obstacles and challenges, especially in terms of enforcing sanctions against perpetrators of desertion.

The Military Police has an important role in handling criminal acts that occur within the TNI environment, including conducting investigations into desertion cases. Based on Article 69 of Law Number 31 of 1997, the authority to investigate in the military environment is held by several parties, namely the Ankom against their subordinates, the Military Police, and the Military Auditor. In this context, the Military Police is tasked with

ensuring that legal norms are applied consistently and in accordance with the regulations in force within the TNI environment.

In practice, law enforcement against the crime of desertion faces various challenges, including differences in judges' considerations in imposing sanctions on perpetrators. Several cases show disparities in the application of sanctions, especially related to factors that can reduce or aggravate the sentence for the accused. For example, deserters who surrender before trial tend to receive lighter sentences compared to those who do not surrender and are not present at the trial.

This study will further analyze the application of military criminal law to TNI members who commit the crime of desertion. The case studies used are Decision Number 23-K / PM.III-14 / AU / IV / 2024 and Decision Number 25-K / PM.III-14 / IX / 2022, which will be the basis for exploring the problems that exist in the enforcement of military criminal law in Indonesia.

Formulation of the problem

1. How is the criminal act of desertion regulated in the Criminal Code?
2. How is the analysis of the judge's decision regarding the application of the law for TNI soldiers who commit the crime of desertion as in the Military Court Decision Number 23-K/PM.III-14/AU/IV/2024 and Decision Number 25-K/PM.III-14/IX/2022?

METHOD

This study uses a normative-empirical legal research method with a conceptual approach. This method was chosen to examine the principles, doctrines, and sources of law in a philosophical and juridical sense. In addition, this study also analyzes court decisions to obtain a clear and correct picture of the problems discussed. The reason for using a normative-empirical approach is so that researchers can obtain the actual facts faced, as well as to answer the formulation of the problems that have been submitted, namely regarding the application of military law to TNI members who commit the crime of desertion and the analysis of judges' decisions against the perpetrators of the crime.

This study uses a statute approach, a conceptual approach, and a case approach. The statutory approach is carried out by examining laws and regulations related to the crime of desertion in the military. The approach used in normative research will enable a researcher to utilize the findings of empirical legal science and other sciences for the purposes of legal analysis and explanation without changing the character of legal science as a normative science. (Suwarjono, 2023). Many legal materials have empirical properties such as comparative law, legal history, and decided legal cases. As previously discussed, normative legal science can and must utilize various findings from other sciences, and interact positively with other sciences, especially empirical legal science. The conceptual approach is used to examine relevant legal doctrines and principles, while the case approach is carried out by analyzing court decisions related to cases of desertion of TNI soldiers.

The type of data used in this study is secondary data, obtained from primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations relating to military justice and the crime of desertion. Secondary legal materials include books, scientific journals, and expert opinions that support this study, while tertiary legal materials are obtained from dictionaries, encyclopedias, and other complementary library materials.

Data collection in this study was conducted through library research, which involved collecting library materials related to the topic being studied. Document studies were used to collect and analyze laws and regulations, court decisions, and other documents relevant to the case of desertion. Data processing techniques were carried out qualitatively, by highlighting legal problems and efforts to solve them through narrative and descriptive approaches. Data analysis was carried out without using statistical techniques, but using analytical descriptive methods to obtain consistency and legal certainty.

RESULTS AND DISCUSSION

Legal Rules in the Military Criminal Code (KUHPM) which regulate the Criminal Act of Desertion

The Republic of Indonesia is a democratic state based on Pancasila and the 1945 Constitution, upholding human rights and guaranteeing equality of every citizen before the law. Currently, Indonesia does not have a national Military Criminal Law, and is still using the Military Criminal Law left by the Dutch before 1942. Although the law has been adjusted to the conditions of Indonesian independence, many feel that there are shortcomings, even oddities, such as the fact that the law is still in Dutch. Even though it has been translated, differences in interpretation must still refer to the original language (Sinaturi, 1958).

Adjustment through Law Number 39 of 1947 has changed the name of the "Wetboek van militair strafrecht voor nederlandsch Indie" to "Kitab Undang-Undang Hukum Pidana Militer." However, Indonesia still does not have a national Military Criminal Law. Before the arrival of the Dutch, soldiers and royal troops in the archipelago were probably regulated by customary law, although there are no written records of this. After the Dutch arrived, the development of military criminal law in Indonesia was divided into four periods: the VOC Era, the Dutch Government before 1811, the British Government Period (1811-1816), and the Dutch Government after 1816 (Tambunan, 2005).

After the Proclamation and the 1945 Constitution, Indonesia continued to use the Wetboek van Militair Strafrecht (WvMS) that was in effect in the Dutch East Indies to prevent a legal vacuum. This WvMS was in line with Dutch military law, although it allowed for adjustments based on Indische Staatsregeling art.132 (Sinaturi, 1958). The government's initial action was to issue Government Regulation Number 2 of 1945, which stated that all existing regulations remained in effect until there was a replacement.

During 1945, no new military laws were issued, causing confusion over which law applied, the Dutch East Indies or the Japanese military. In practice, Dutch East Indies military law was given priority. The first military law issued was Law Number 7 of 1946 concerning the Military Court, but because there was no substantive law, its implementation was difficult. To overcome this problem, Law Number 39 of 1947 concerning the Military Criminal Code (KUHPM) was issued, along with a number of other laws regulating military law during the emergency period of 1945-1948 (Sumaperwata, 2007).

Entering the end of 1956, security disturbances increased, so the government imposed emergency law in early 1957. The peak was the PRRI/PERMESTA rebellion in 1958. After the security disturbances ended, the Extraordinary Military Court (MAHMILUB) was formed through Presidential Decree Number 16 of 1963 to try the figures of the rebellion.

In 1974, Law of the Republic of Indonesia Number 20 concerning the Principles of State Defense and Security was enacted, amended to Law of the Republic of Indonesia Number 1 of 1988, and replaced by Law of the Republic of Indonesia Number 3 of 2002. Military issues in Indonesia arose mainly due to the struggle to seize West Irian, President Soekarno's order to invade North Kalimantan, and the PKI rebellion. After the reformation, the police were separated from the TNI, and TNI members were subject to general law.

The principles of military law include:

1. Unity of Command: Hierarchical control under one command.
2. Commander's Responsibility: The commander is responsible for the actions of his subordinates.
3. Military Interests: Activities must focus on the main tasks of the TNI.
4. Not Recognizing Surrender: The spirit of the TNI must not be extinguished.

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5. Limitation: The use of force must be in accordance with the interests of the state.
6. Proportionality: The use of force must be balanced.
7. Objective: To ensure the success of the TNI's main tasks.

The legal basis of the Indonesian military includes the Pancasila ideology, the 1945 Constitution as the constitutional basis, and various laws that regulate the duties and positions of the TNI. The legal doctrine of the Indonesian military, based on Tridarma Eka Karma, provides guidelines for the TNI in carrying out national defense duties.

The history of military law in Indonesia is inseparable from the development of the state system, divided into three regimes: the Old Order, the New Order, and the Reformation Order. Military Criminal Law is part of the Positive Law that applies to the justiciability of Military Justice, regulating the basics and regulations regarding prohibitions and obligations, as well as sanctions for violators. Military crimes are divided into two categories:

1. Pure Military Crimes: Actions that can only be committed by the military, such as desertion (leaving service without permission) and surrendering a post to the enemy.
2. Mixed Military Crimes: Acts that are regulated in general law but have special provisions in the Criminal Code due to military circumstances.

Military criminal law in the material sense is contained in the Military Criminal Code (KUHPM), while in the formal sense it is regulated by Law No. 1 Drt. of 1958 and other laws. Military criminal law is a special law for the military that also follows the provisions of general criminal law (Salam, 2006). Examples of pure military crimes include:

1. A military person who in a state of war surrenders a post to the enemy without attempting to defend it.
2. The crime of desertion.
3. Leave the guard post.

Mixed Military Crimes are prohibited acts that are also regulated in the Criminal Code due to the special circumstances of the military (Sumaperwata, 2007). The increased sanctions are intended to fulfill justice in accordance with the special conditions faced by the military. Desertion is defined as leaving military service without permission, with the threat of criminal penalties for those who do so (Sianturi, 2010).

Desertion in the military context is regulated in Article 87 of the Criminal Code, which stipulates that the act of leaving military service with the intention of withdrawing permanently, avoiding the dangers of war, crossing over to the enemy, or entering the military service of another country without permission can be categorized as desertion. The following is a summary of the perpetrator's intent in desertion:

1. Withdrawing permanently: The perpetrator leaves with no intention of returning to his unit. If a soldier expresses an intention not to return before leaving and is later caught, the act can be considered desertion.
2. Escaping the dangers of war: If a military man flees to avoid combat, such as when there is a threat in a war zone, this action can also be categorized as desertion.
3. Desertion: If the perpetrator attempts to join the enemy, even though he is caught before reaching his destination, he is still considered to have deserted.
4. Entering another country's military service without permission: If a military man joins a rebel force or another military organization without permission, it is also considered desertion.

In addition, Article 87 paragraph (1) 2 of the Criminal Code regulates absence without permission, which is subject to criminal penalties if it exceeds a certain time limit. Absence of more than 30 days in peacetime or more than 4 days in wartime can be considered desertion, showing the importance of presence in military service.

The application of Article 87 of the Criminal Code on desertion covers two main conditions: peacetime and wartime. Desertion occurs when a military person is absent without permission for more than 30 days in peacetime or more than 4 days in wartime. There are two forms of desertion, namely pure desertion, which includes actions such as withdrawing permanently from service, avoiding the dangers of war, crossing over to the enemy, or entering the military service of another country without permission; and desertion

as an increase from absence without permission. The elements of desertion include the subject of the perpetrator who can only be a military person, the element of error, the implied unlawful nature, and the prohibited act of absence without permission. The length of absence affects the threat of criminal penalties, with heavier sanctions for desertion committed with the intention of joining the enemy. In addition, repeated desertion, especially if committed abroad, can result in a significant increase in punishment.

Legal Rules for Settlement of Criminal Acts of Desertion in Law Number 31 of 1997

Military Justice is regulated in Law Number 31 of 1997, which states that this justice aims to uphold law and justice in the armed forces environment. Article 5 paragraph (1) emphasizes that judicial power in military justice is culminated in the Supreme Court. Military Criminal Procedure Law is designed based on a systemic approach, combining national criminal procedure law and state administrative procedure law, taking into account the characteristics of military life (Law No. 31 of 1997).

Military justice is operated by a subsystem that includes investigations by superiors who have the right to punish, military police, and military prosecutors, as well as the examination process in court. Military law is built for the interests of national defense (Law No. 34 of 2004) and includes military members as legal subjects. The authority of the military court includes handling armed forces administrative disputes (Law No. 5 of 1986).

The position of military justice in the national justice system is regulated in various laws, including the 1945 Constitution which guarantees the independence of the judiciary. Unit commanders have an important role in law enforcement, regulated in Law No. 29 of 1954, which emphasizes the principle of unity of command. The placement of civilians in military justice has raised objections, due to a lack of understanding of military life.

Overall, military justice in Indonesia is designed to ensure discipline and obedience within the armed forces environment, taking into account the special needs related to national defense duties (Sugiri, 1976).

1. Limitations of the Criminal Act of Desertion in Absentia

There are two views regarding the in absentia trial for the crime of desertion. The first view states that the in absentia trial only applies to cases where the investigation is conducted without the presence of the Suspect. If the Suspect is present at the trial, the trial must be postponed for re-examination. The second view argues that all desertion cases, whether investigated in absentia or not, can be tried in absentia if the Defendant cannot be present. When the Defendant who is investigated in absentia is present at the trial, the second opinion allows the trial to continue, while the first opinion requires the return of the files for re-examination.

2. Requirements for In Absentee Trial

According to Article 143 of Law No. 31 of 1997, an in absentia trial may only be conducted if:

- a. The defendant was not found for six consecutive months.
- b. There have been three legal summonses.

The first explanation calculates a six-month grace period starting from the submission of the files to the court, which must be supported by a statement from the Unit Commander. There are two opinions regarding this formality: one supports shortening the time for efficiency, while the other emphasizes the importance of legal certainty according to existing provisions.

3. Calculation of Desertion Period

There are three opinions regarding the deadline for desertion:

- a. The deadline is determined during the examination by the investigator.
- b. Based on the decision to hand over the case (Keppera).
- c. During the examination in court

The author tends to agree with the third opinion, that the final deadline for determining the time of desertion is determined during the examination at the trial.

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4. Provisions in the Law

- a. Article 124 paragraph (4): Examination of the suspect is not a formal requirement, so that files can be processed even if the suspect is not present.
- b. Article 141 paragraph (10): The trial is conducted without the presence of the Defendant who cannot be found.
- c. Article 143: Definition of in absentia examination to discipline soldiers who run away and are absent after being summoned.

The six-month time calculation starts from the time the files are submitted to the court and must be supported by a statement from the Commander.

Analysis of Judge's Considerations in the Crime of Desertion Based on Court Decisions Decision Number 23-K/PM.III-14/AU/IV/2024 & Decision Number 25-K/PM.III-14/IX/2022

The crime of desertion is a military violation often committed by TNI members, even though they are aware of their responsibility to guard the Unitary State of the Republic of Indonesia. Desertion is defined as an absence without permission for more than 30 days in peacetime or more than 4 days in wartime, as regulated in Article 87 of the Criminal Code.

This crime is resolved through military criminal law in a military court, based on Law Number 26 of 1997 concerning TNI Military Discipline and TNI Commander's Decree Number Kep/22/VIII/2005. High military discipline can reduce violations. According to Article 27 paragraph (1) of the 1945 Constitution, all citizens, including TNI members, are equal before the law.

TNI members' crimes are processed by military prosecutors and judges, and they do not have privileges in the legal process. The jurisdiction of military courts is regulated in Article 9 of Law Number 31 of 1997, which covers every TNI member who commits a crime. Military crimes also include crimes regulated in the Criminal Code, such as unauthorized absence (THTI) and desertion, which are the most common violations.

The military criminal justice system consists of various components, including the Superiors Who Have the Right to Punish (ANKUM), the Case Handling Officer (PAPERA), the Military Police (PM), the Military Prosecutor (OTMIL), the Military Judge (KIMIL), and the Military Correctional Institution Officer (Masmil). Factors causing disparities in criminal decisions for desertion, namely:

1. Viewed from the legal aspect, the Criminal Code adopts an indefinite formulation system, meaning it is not determined with certainty. This is proven in Article 87 paragraph (1) ke-2 jo 2 of the Criminal Code concerning "The crime of desertion", which states that "Threatened with a maximum prison sentence of two years and eight months". From here the makers of the Criminal Code give the Judge the freedom to choose the time span of the prison sentence, where the minimum is one day and the maximum limit is two years and eight months in prison.
2. Judging from the defendant's attitude, whether the defendant fled or surrendered. This difference in attitude affects the criminal verdict. The verdict of the case against the defendant who committed desertion and then fled and his whereabouts are unknown, then the defendant can be dismissed from the military, if at some point the defendant is found, then the defendant will still serve the prison sentence imposed on him, while for the defendant who committed desertion and was caught by the Military Police or surrendered, then the criminal sanction is only sentenced to prison without dismissal. Second, the Author will describe the causes of the differences in charges given by the Prosecutor to the desertion case.
3. Because the defendant who committed the crime of desertion fled and his whereabouts are unknown, and during the trial process until the final decision was made by the III-Denpasar Military Court, the defendant was never present at the trial (in absentia).
4. Because the defendant who committed the crime of desertion was caught by the Military Police or surrendered to the unit and admitted that the defendant had committed the crime of desertion of his own accord.

Military courts do not adopt cumulative charges. It could happen that when the defendant committed the crime of desertion he also committed assault or other crimes, then

in the settlement of the case can be charged cumulatively or separately. The settlement of this case depends on the investigation, if from the beginning the investigation was carried out separately, then it will be tried separately and which case will be processed first, depends on which case was reported first, while if from the beginning the investigation has been combined then it can be charged with cumulative charges.

In military life, absence without permission, whether less than thirty days or even more than thirty days, must be accounted for the actions taken by a military member, because a military member is required to be disciplined. Because this is an attitude of readiness from the military member himself. Like the member who left the TNI AU Base Unit TGKH. M. ZAM without permission from the Kasatker or other authorized superiors from October 16, 2023 to January 25 or for 102 (one hundred and two) consecutive days. during the Defendant's absence from duty without permission from the Dansat or other authorized superiors, the Unitary State of the Republic of Indonesia was in a safe and peaceful state and neither the Defendant nor his unit were being prepared for a Military Operation task. The Defendant was brought to trial by the Military Auditor with a single indictment dated July 25, 2024. with indictment number No. Sdak / 86 / VII / 2024. Based on the indictment of the Military Prosecutor, the Defendant has been found guilty of committing a crime as regulated and threatened with a criminal penalty in violation of Article 86 point 1 of the Criminal Code and the Defendant must be given a penalty commensurate with his actions.

a. Indictment.

In the indictment, the Military Prosecutor (Odmil) has given a single indictment, namely Article 86 point 1 of the Criminal Code. The indictment is important, because it is based on the origin of Article 130 paragraph (2) of Law Number 31 of 1997 concerning Military Justice. The Military Prosecutor made an indictment which was dated and signed and contained:

- 1) Full name, rank/NRP, position, unit, place and date of birth, gender, citizenship, religion and place of residence.
- 2) A precise, clear and complete description of the crime charged, stating the time and place where the crime was committed. If the indictment does not meet these requirements, the indictment is null and void by law.

b. Criminal Charges

Based on these considerations, the Military Auditor handling the case outlined his demands, which in essence demanded that the Panel of Judges at the Military Court examining and trying this case decide:

- 1) Declaring the Defendant above, namely Kopka Basis NRP 526999, proven legally and convincingly guilty of committing a Military crime by intentionally being absent without permission during peacetime for at least one day and no longer than thirty days.
- 2) Sentencing the Defendant to a prison sentence of 5 (five) months minus the time the Defendant has served in temporary detention.
- 3) Determine the evidence in the form of 16 (sixteen) sheets of the Attendance list for October 2023 to January 2024 in the name of Kopka Basis. Remain attached to the case file.
- 4) Charge the Defendant with court costs of Rp. 7,500 (seven thousand five hundred rupiah).

c. Decision.

Based on the matters stated above, then by paying attention to the provisions of Article 86 point 1 of the Criminal Code, the Judge decided this case with the following Decision.

- 1) Declaring the Defendant above, namely Kopka Basis NRP 526999, proven legally and convincingly guilty of committing a Military crime by intentionally being absent without permission during peacetime for at least one day and no longer than thirty days.

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- 2) Sentencing the Defendant to a prison sentence of 5 (five) months. Determining that the time the Defendant has been in temporary detention will be reduced in full from the sentence imposed.
- 3) Determine the evidence in the form of 16 (sixteen) sheets of the Attendance list for October 2023 to January 2024 in the name of Kopka Basis 7. Remain attached to the case file.
- 4) Charge the Defendant with court costs amounting to Rp. 7,500 (seven thousand five hundred rupiah).

Case II.

The case of the crime of desertion committed by a member of the TNI as the perpetrator of the crime in the jurisdiction of the III-14 Denpasar Military Court, case number: 25-K/PM.III-14/AU/IX/2022, where the identity of the defendant mentioned in the indictment is:

- | | |
|----------------------------|--|
| 1. Name | : Wiseso Day Assignment |
| 2. Rank / NRP | : Praka/543098 |
| 3. Position | : YesPamfik Unitpaspom Satpom Lanud TGKH. M. ZAM |
| 4. Unity | : TGKH. M. ZAM Air Force Base |
| 5. Place and date of birth | : Jember, September 12, 1992 |
| 6. Citizenship | : Indonesia |
| 7. Residence | : Indonesian Air Force Dormitory TGKH. M. ZAM Air Force Base Selaparang, Mataram City. |

The imposition of criminal sanctions decided by the Judge at that time imposed a prison sentence and additional punishment in the form of dismissal from Military service on Tugas Hari Wiseso. In this case, the Defendant had been absent without permission for (32) thirty-two days during a peaceful period which was done intentionally, in addition, the Defendant's whereabouts were unknown until the decision of the III-14 Denpasar Military Court or Inabsensia. The Defendant in this case had committed the crime of desertion.

Unauthorized absence in military life, whether less than thirty days or more than thirty days, must be accounted for against the actions taken by each member of the Military, because Military members are highly demanded regarding discipline. Discipline here is a form of readiness of each member of the Military itself. The defendant Tugas Hari Wiseso served in the Unitpaspom Satpom Lanud TGKH. M. ZAM The defendant has left the Unit without permission from the Unit Commander or other authorized superiors since July 4, 2022 until the making of the Minutes of the Defendant's Not Being Found, for + 90 (ninety) days which means longer than 30 (thirty) consecutive days. The defendant was brought to trial by the Military Auditor with a single indictment with the indictment number Sdak/13/XI/2022. Based on the indictment of the Military Auditor, the defendant was found guilty of committing the crime of desertion which is regulated and is subject to criminal penalties in violation of Article 87 paragraph (1) 2 in conjunction with paragraph (2) of the Criminal Code and the defendant must be given a punishment commensurate with the actions he has committed.

1. Indictment, in the indictment the Military Auditor has given a single indictment, namely based on Article 87 paragraph (1) 2 in conjunction with paragraph (2) of the Criminal Code.
2. Criminal Charges, The military prosecutor in handling this case outlined his demands, namely, in essence, demanding that the Military Court Panel examining and trying this case decide:
 - a. Declaring that the Defendant Tugas Hari Wiseso has committed the crime of "Desertion in times of peace" as regulated and subject to criminal penalties in Article 87 paragraph (1) 2 in conjunction with paragraph (2) of the Criminal Code;
 - b. Imposing a criminal sentence on the Defendant with:
 - 1) The principal penalty is imprisonment for 1 (one) year and 6 (six) months.
 - 2) Additional Penalty Dismissed from Military Service.
 - c. Establishing evidence in the form of 12 (twelve) sheets of attendance records for TGKH. M. ZAM Air Force Base Personnel from July 2022 to September 2022.

- d. Requires the Defendant to pay court costs of Rp. 7,500 (seven thousand five hundred rupiah).

Decision, Based on the matters stated above, then by paying attention to the provisions of Article 87 paragraph (1) 2 in conjunction with paragraph (2) of the Criminal Code, the Judge decided this case with the following decision:

1. Declaring the Defendant Tugas Hari Wiseso Praka Nrp 543098, proven legally and convincingly guilty of committing the crime of "Desertion in peacetime.
2. To sentence the Defendant therefore with:
 - a. Principal penalty: Imprisonment for 1 (one) year 6 (six) months.
 - b. Additional Penalty: Dismissed from Military Service.
 - c. Establish written evidence in the form of:
 - d. letter of 12 (twelve) sheets of attendance records for TGKH. M. ZAM Air Force Base personnel from July 2022 to September 2022.
 - e. Remain attached to the case file. Requires the Defendant to pay court costs of Rp 7,500,- (seven thousand five hundred rupiah).

Factors Causing the Crime of Desertion

The problem of crime is a human problem which is a social reality whose causes are poorly understood because its study is not yet in the right proportion dimensionally. The development or increase in crime or the decline in the quality and quantity of crime, both in urban and rural areas are relative and interactive in nature. It can be understood that crime is the shadow of civilization, is the shadow of civilization and there is even a theory that says that crime is a product of society (Hasibuan, 1994).

WA Bonger defines crime as a very anti-social act which is consciously challenged by the state in the form of suffering (punishment and action) (Bonger, 1982). Crime cannot happen without a cause, that the factors that influence someone to commit a crime are broadly divided into two factors that are found within the perpetrator, and the second factor is factors that are outside the perpetrator's personality, namely members of society or people around him (environmental factors) (Hamzah, 1986).

That to obtain a definite answer regarding what causes the criminal act of desertion committed by TNI soldiers is very limited and is determined by each individual perpetrator, because this desertion can occur due to various reasons or motives.

Based on the research that the author has done, it was found that the act of desertion was carried out by members of the TNI military which was driven by several factors. Which causative factors are certainly not single, there are always personal motives, and also because of environmental influences. The results of the report on the implementation of the work program of the Military Court and Military Auditor III - 14 Denpasar) explained that a TNI soldier committed the crime of desertion due to external factors (from outside) and internal factors (from within).

1. External Factors
 - a. Lack of understanding of the regulations in force in the TNI environment. Military members both in combat units and in combat support units (Banpur) are always trained in carrying out daily tasks both in the interests of the state and for the interests of the unit. From the implementation carried out, there are still military members who do not understand the military regulations themselves.
 - b. The task and placement factors are not appropriate because the perpetrator considers that the operational task he was ordered to carry out is not considered beneficial to him. Such as his task to eradicate rebel groups and secure conflict areas. He considered that the task would actually endanger him. So he took a shortcut by running away from his unit. Meanwhile, regarding the placement of inappropriate assignments, usually the soldier has been placed in the unit where he is assigned, then in that place he feels comfortable, then he is transferred to a new assignment place that is not appropriate so that in the end he does not occupy the assignment place.

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- c. Environmental factors. Usually obtained from the perpetrator's bad social and association environment. Where he/she chooses the wrong social environment. So that he/she is also involved in committing violations and crimes.
2. Internal Factors.
- a. Family/Household Factors because the perpetrator's household/family is usually no longer harmonious, there are often conflicts, quarrels and maybe because of unpaid debts in the household/family. In fact, the family environment is the most important factor in the formation of a person's character and personality which will be a benchmark for being able to socialize outside their environment. But if this does not go as it should, it can cause someone to do things and behave outside the norms that apply in society or those made by officers. Likewise with desertion, rifts in the household and disharmony in the relationships of each individual in the family can cause a soldier to desert, no longer wanting to carry out his service obligations.
 - b. Economic factors, usually more related to family finances, especially if the soldier has a lot of debt that causes the soldier to be stressed, where as is commonly known that crime arises because of poverty. If someone lives in poverty, it will cause them to do anything to meet their needs. Their duties as a TNI soldier are identical to living a mediocre life, the salary received by TNI soldiers is usually not large, enough for daily needs, not for other needs such as children's education costs. So usually the father racks his brains to find additional income to meet the needs of the family. This causes the perpetrator to neglect his duties and obligations as a soldier. This criminal act of desertion is often carried out at the NCO level and below. Because the lower the rank of a soldier, the more certain it is that his family's life will be less prosperous.
 - c. The Intention Factor of the Perpetrator, usually no longer has the desire to become a soldier. If someone has entered and has become a member of the TNI, then it is very difficult for him to free himself from the bonds of service. This causes him to carry out all his duties and obligations of service not with full responsibility anymore, and tries to find mistakes so that he can be fired and expelled from the unit.
 - d. Age Factor, physical growth and increasing human age also determine the occurrence of a crime committed by a person. Since childhood to old age, a person undergoes changes and developments in his body and mind. In criminology, scholars have conducted investigations and found that at every age level a person will commit certain crimes. This is proven by cases of desertion that occur in the TNI environment, where the perpetrators are usually mostly still teenagers/young people.
 - e. Education Factor, to be able to determine the good or bad of an act depends on the thinking power of a person who judges it. A person's thinking power is certainly influenced by the level of education. The low level of education of a person will affect his behavior and actions. A soldier is required to be professional in carrying out his daily tasks, in the field of operations or on the battlefield. So it should be necessary to have an educational limit for someone who wants a career as a TNI soldier so that they can have a high level of understanding and can better assess everything, so that the possibility of violations, crimes in carrying out their duties and obligations can be minimized as much as possible.

Lack of Mental Readiness, assigned to Conflict and Remote Areas Caused by the lack of training and the unpreparedness of the soldiers' mentality when they are deployed in conflict and remote areas. Because one of the duties and obligations of a soldier is to always be ready to be deployed to areas that are experiencing turmoil and on remote islands throughout Indonesia. Soldiers must always be ready for that at any time to be assigned anywhere. Conflict areas are always shrouded in conflict, making the assigned soldiers anxious about their safety, so that this causes many soldiers to leave their units. While remote areas are always worried about the difficulty of

transportation, economy, entertainment and high cost of living, so if soldiers placed in remote areas are not mentally prepared, it can cause the soldiers to feel uncomfortable, which can also lead to the crime of desertion.

CONCLUSION

From this study, it can be concluded that the application of criminal penalties to members of the Indonesian National Army who deserted is determined by the judge's considerations in sentencing the defendant. The judge's decision in two cases of desertion crimes showed differences in sentencing, depending on the considerations taken by the judge. Both defendants in this case were sentenced to principal and additional criminal penalties, with the difference based on the defendant's actions whether they surrendered or not. In cases where the defendant surrendered, the judge gave mitigating considerations, such as that the defendant had never been convicted before, admitted his mistake in court, regretted his actions, and promised not to repeat his actions. On the other hand, defendants who did not surrender or were not present at the trial did not receive leniency and instead received aggravating considerations, such as actions that were contrary to the Sapta Marga and the Soldier's Oath and prioritizing personal interests over service interests.

In terms of implementing the principle of accelerating the settlement of cases in military courts, the steps that need to be taken are that desertion cases, which have relatively simple evidence, must be limited in time from the beginning of the settlement process. The special trial in absentia mandated by Law Number 31 of 1997 concerning Military Courts, especially Article 143, needs to be revised because it is no longer effective, considering that the crime of desertion is classified as a crime of office. Therefore, a decision in a desertion case can be taken even if the defendant is not present at the trial, as long as the case has been going on for a long time and the evidence is strong enough.

As a suggestion, the author recommends that TNI work units, especially commanders and Heads of Maintenance Sections (Kasihar), pay more attention to the personal conditions of their members so that they can detect problems that have the potential to trigger criminal acts of desertion. In handing down criminal sentences, judges are expected to be more observant in considering external and internal factors, especially for defendants who surrender, so that the decisions taken can reflect justice. In addition, the author suggests a revision of Article 143 of Law Number 31 of 1997, especially regarding the three summonses that are considered appropriate to be replaced with one summons so that the handling of desertion cases in absentia is more optimal and effective throughout Indonesia. With this revision, it is hoped that law enforcement in desertion cases can be carried out more efficiently and fairly.

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