

Criminal Law Policy On The Crime Of Desertion Performed By Members Of The Indonesian National Army

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Abstract

An absolute requirement in military life is to comply with TNI regulations and official orders from each superior in order to uphold a life in the military that is full of high awareness. If these things are violated (desertion), it will only shake the joints of discipline and order in the TNI. The formulation of the problems in this study are: 1) What is the criminal law policy on desertion crimes committed by members of the Indonesian National Armed Forces? 2) What are the obstacles to criminal law policies against desertion crimes committed by members of the Indonesian National Armed Forces and what are the solutions. The author uses a normative juridical approach. The sociological juridical approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object related to this research. The results of this study are: 1) The criminal law policy against the criminal act of desertion in Indonesian military law is clearly regulated in Article 87 of the Criminal Procedure Code and the punishment for members who become the perpetrators of desertion is regulated in Article 88 of the Criminal Procedure Code. The application of military law against the perpetrators of the crime of desertion as a Military Member (TNI) carries a heavier penalty than the threat of punishment found in the general public, because the military is not only armed to maintain security but must be disciplined, instead of using desertion. Desertion in this case is absence without permission, intentionally for 30 consecutive days. 2) Obstacles in the implementation of military law against members of the Indonesian National Armed Forces (TNI) who commit the criminal act of desertion in general because the investigations carried out by Military Police investigators still often do not meet the formal and material requirements.

Keywords: *Military Criminal Law, TNI, Desertion Crime.*

I. INTRODUCTION

The Indonesian National Army (TNI) is an inseparable part of the Indonesian people, born from the arena of the nation's independence struggle, grew up, and developed together with the Indonesian people in maintaining and fulfilling independence. The TNI, which has an identity as a people's army, national army, and professional army based on the Sapta Marga and the Soldier's Oath, requires high discipline, willing to sacrifice body and soul as an absolute requirement in carrying out its duties, functions and obligations for the benefit of the implementation of national defense. Every TNI soldier is obliged to carry out service orders. Service orders are defined as a will related to the interests of military service to be carried out as well as possible. The main task of the TNI is to uphold the sovereignty of the state.¹The TNI is limited by military laws and regulations so that all actions taken must also be based on applicable laws and regulations.

In carrying out its heavy and very special duties and obligations, the TNI is educated and trained to obey orders or decisions without arguing and carry out these orders or decisions in an efficient and effective manner.²Every member of the TNI must obey and obey the legal provisions that apply specifically to the military, namely Law Number 39 of 1947 concerning the Military Criminal Code (KUHPM), Law Number 25 of 2014 concerning Military Disciplinary Law, Law No. -Law Number 34 of 2004 concerning the Indonesian National Army, Law Number 3 of 2002 concerning National Defense, and Law Number 31 of 1997 concerning Military Courts. This regulation applies to enlisted personnel, non-commissioned officers or officers who commit an act that is detrimental to the unit, the general public and the state. In the Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Armed Forces Article 7 paragraph 1, the duties of the TNI are to uphold the sovereignty of the state, to maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protect the entire nation and the entire homeland of Indonesia from threats and disturbances to the integrity of the nation and state. Furthermore, in paragraph 2 the main task is carried out by:

- a. Military operations for war.
- b. Military operations other than war, namely to:
 1. overcoming armed separatism;
 2. overcoming armed insurgency;
 3. tackle acts of terrorism;
 4. securing border areas;
 5. securing strategic national vital objects;
 6. carry out the task of world peace in accordance with foreign policy;
 7. securing the President and vice president and their families;
 8. empowering the defense area and its supporting forces early in accordance with the universal defense system;
 9. assisting local government tasks;
 10. assist the State Police of the Republic of Indonesia in the framework of the task of security and public order as regulated by law;
 11. help secure state guests at the head of level and representatives of foreign governments currently in Indonesia;
 12. helping to cope with the effects of natural disasters, evacuation, and providing humanitarian assistance;
 13. assist search and rescue in accidents (search and rescue); as well as
 14. assist the government in securing shipping and aviation against piracy, piracy and smuggling.

Based on the provisions of the legislation above, if there is a TNI soldier who does not carry out the tasks mentioned above, it will be deemed to have violated the policy of the soldier's regulation and is said to have committed a crime.³One of the crimes committed by members of the TNI is desertion. Desertion is a military crime which is categorized as a pure crime. Desertion is the absence of a military person without the permission of his direct superior, at a place and time that has been determined by the service, by running away from the unit and leaving the military service, or leaving by leaving, escaping without permission. The term desertion is regulated in the Military Criminal Code (KUHPM) Chapter III concerning Crimes That Are A Way For A Military Person To Withdraw From Performing Service Obligations.⁴In the Criminal Procedure Code, the crime of desertion is regulated in Article 87 with the following formulation:

"Threatened for desertion, military: The 1st Who leaves with the intention of permanently withdrawing from his service obligations, avoiding the dangers of war, crossing over to the enemy or entering military service in a State or other power without being justified in doing so. 2 Those who due to their fault or intentional absence without permission in a period of peace longer than thirty days, in a time of war no longer than four days Thirdly Those who intentionally do not attend without permission and therefore do not participate in carrying out part or all of a ordered journey, as described in Article 85-2."The process of resolving military crimes, especially desertion, is generally different from general crimes, the difference lies in the subject that military crimes are committed by a military person, while general crimes are committed by pure civilians. The crime of desertion is also referred to as an act / crime of absenteeism without permission as stated in Chapter III of the Criminal Procedure Code which at the initial level is generally more likely to be an act that should not occur in military life. The increase in desertion crimes committed by the military has indirectly illustrated the decline in the level of soldier discipline.

Meanwhile discipline is a guideline for every TNI soldier because discipline is the backbone and breath of military life. Data shows the number of violations committed by TNI soldiers in 2018 was 127 cases with 40 cases being military criminal offenses, 29 general criminal cases, 12 special criminal cases, and 46 traffic violations cases. In 2019 it decreased to 94 cases with 40 military criminal cases, 24 general

criminal cases, 4 special criminal cases, and 26 traffic violation cases.⁵In 2020 the number of violations committed by TNI soldiers jumped again to 193 cases with 74 cases of desertion, 17 cases of decency, 15 cases of narcotics, 27 cases of violence and sexual violence, and 60 other criminal cases.⁶ In Central Java Province there are 2 criminal cases involving members of the TNI who were tried in military courts. In 2013 the Military Court III-13 Madiun tried Thomas Abadi, a member of the Sathar 61 Depohar 60 unit with the rank of Serma with NRP 519613 who was legally and convincingly proven guilty of committing the crime of desertion, namely intentionally absent without permission in a peaceful period longer than 30 days. by giving a prison sentence of 2 months and 20 days.⁷In 2014, still with the same defendant, Thomas Abadi, a member of the Sathar 61 Depohar 60 unit with the rank of Serma with NRP 519613, was tried again at the Military Court III-13 Madiun and was proven legally and convincingly guilty of committing the crime of embezzlement which was carried out jointly by giving a sentence imprisonment for 8 months.⁸

II. METHODS

This research will be structured using the type of normative juridical research, which is an approach based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research.⁹. The research specification used in completing this thesis is descriptive analytical research method, namely this study describes the criminal law policy against desertion crimes committed by members of the Indonesian National Armed Forces and analyzes the obstacles to the implementation of criminal law policies against desertion crimes committed by members of the Indonesian National Armed Forces. Indonesian national army. The data sources used are primary and secondary data. Primary data is obtained from data or facts and legal cases obtained directly through research in the field, including information from informants related to the object of research and practice. Meanwhile, secondary data as the main data is carried out by means of a literature study. This secondary data is useful as a theoretical basis to underlie the analysis of the main problems in this study. Secondary data in this study include:

1. Primary legal materials, which consist of:
 - a. 1945 Constitution of the Republic of Indonesia.
 - b. Military Criminal Code
 - c. Law Number 31 of 1997 concerning Military Courts (LN. 1997, LL State Secretariat: 139 Page)
 - d. Law No. 34 of 2004 concerning the Indonesian National Armed Forces (LN. 2004/ No. 127, TLN No. 4439, LL State Secretariat: 37 pp).
 - e. Law No. 25 of 2014 concerning Military Disciplinary Law (LN. 2014/ No. 257, TLN No. 5591, LL State Secretariat: 29 pp).
2. Secondary legal material.

Books, documents and other materials related to criminal law policies against desertion crimes committed by members of the Indonesian National Armed Forces.
3. Tertiary Legal Materials, which consist of:

Indonesian Dictionary, English Dictionary, Legal Dictionary, Encyclopedia and guidelines for writing scientific papers.

The data analysis method used is in the form of qualitative analysis, namely the decomposition of data analysis starting from the information obtained from primary data and secondary data to achieve clarity on the problem to be studied.

III. DISCUSSION

In everyday life people often hear the use of the terms Armed Forces of the Republic of Indonesia (ABRI), military and soldiers. The use of the Military name has been applied in criminal justice, this is in accordance with the Military Criminal Code (KUHPM), in military administrative courts the name of the Armed Forces of the Republic of Indonesia (ABRI) is used, while the word soldier is used in Law Number 34 2004 concerning the Indonesian National Armed Forces, however, what is meant by Military, ABRI and Soldiers in principle are no different. Soldiers or TNI consists of the Army, Navy, and Air Force who carry out their duties individually or jointly under the leadership of the Commander. In carrying out their responsibilities, of course, there is the possibility of irregularities committed by members of the Indonesian Army Soldiers. The form of deviation, among others, is a violation of the law. In military life, violations of the law can be separated into two groups, namely violations of special/military laws and violations of general law. Violations of military law itself are grouped into two, namely those classified as violations of disciplinary law and military crimes. Every TNI soldier who violates the law and has been sentenced to legal sanctions will be subject to administrative sanctions, the severity of the administrative sanctions imposed depends on the type of violation committed and to facilitate the handling, it is divided into categories of violations and administrative types. Types of administrative sanctions and classes of violations, including:

1. Types of administrative sanctions
 - a) Sanctions on education are administrative sanctions/punishments that accompany the case settlement process as well as the imposition of criminal/disciplinary penalties that result in delays in the type of education for Dikbangum/Susufung/Susjab/Diktuk and other equivalent education.
 - b) Sanctions against positions are administrative sanctions/punishments that accompany the case process as well as the imposition of disciplinary/criminal penalties that result in delaying the placement of positions.
 - c) Sanctions against rank are administrative sanctions/punishments that accompany the case settlement process as well as the imposition of disciplinary/criminal penalties that result in a delay in promotion.
 - d) Administrative sanctions in the form of Disrespectful Dismissal, the settlement process is based on the applicable Technical Manual on Disrespectful Dismissal
2. Class of violations.
 - a) Group I
Army soldiers who violate the disciplinary law and the process has been completed and a Disciplinary Sentence Decision (Kep Kumplin) has been issued from the superior who has the right to punish (Ankum). Types of Disciplinary Punishment:
 - 1) Reprimand
 - 2) Light detention for a maximum of 14 days
 - 3) Heavy detention for a maximum of 21 days
 - b) Group II
TNI AD soldiers who commit criminal acts (crimes/violations) and are processed through Military Courts/General Courts and the process has been completed with a court decision that has obtained permanent legal force, with types of criminal penalties:
 - 1) Penalty fines or substitute imprisonment.
 - 2) Conditional criminal punishment.
 - 3) The prison sentence is up to three months.
 - 4) Imprisonment of more than three months.
 - c) Group III
TNI AD soldier whose case is still in the process of completion/examination and there has been no decision from Ankum or a court decision.

3. Application of administrative sanctions

The application of administrative sanctions against Indonesian Army Soldiers who violate the law are as follows:

a) Against TNI AD Soldiers who violate the law in category I:

1) For Officers.

(a) Dropped hi penalty of reprimand, resulting in:

(1) Education: postponed from attending Dikbangum/Susfung/Susjab and other equivalent education 12 (twelve) months after fulfilling the requirements to attend education.

(2) Position/rank

(a) Position: post promotion is postponed for 6 (six) months after; or

(b) Rank : promotion is postponed for 1 (one) period.

(b) Sentenced to light detention, resulting in:

(1) Education: postponed from attending Dikbangum/Susjab/Susfung and other equivalent education 12 (twelve) months after fulfilling the requirements to attend education.

(2) Position/rank.

i. Position : promotion to position is postponed for 12 (twelve) months, or

ii. Rank: postponed promotion for 2 (two) periods.

(c) Sentenced to severe detention, resulting in:

(1) Education: postponed from attending Dikbangum/Susfung/Susjab and other equivalent education 12 (twelve) months after fulfilling the requirements to attend education.

(2) Position/rank

i. Position: postponed promotion to 18 (eighteen) months, or

ii. Rank: postponed promotion for 3 (three) periods.

2) For non-commissioned officers / enlisted.

(a) Sentenced to reprimand, resulting in:

(1) Education: Postponed from participating in the Dikcapa/Dikcabareg selection for 6 (six) months after fulfilling the requirements to attend education, or

(2) Rank : Postponed promotion of 1 (one) period.

(b) Sentenced to light detention, resulting in:

(1) Education: Postponed from participating in the Dikcapa/Dikcabareg selection for 12 (twelve) months after fulfilling the requirements to attend education, or

(2) Postponed promotion of 2 (two) periods.

(c) Sentenced to severe detention, resulting in:

(1) Education: postponed from participating in Dikcapa/Dikcabareg and other equivalent education 18 (eighteen) months after fulfilling the requirements to attend education.

(2) Rank : promotion is postponed for 3 (three) periods.

b) Against TNI AD Soldiers who violate the law in the category II category.

1) For Officers.

(a) Sentenced to a fine or a substitute imprisonment, resulting in:

(1) Education: postponed from attending Dikbangum/Susfung/Susjab and other equivalent education 12 (twelve) months after fulfilling the requirements to attend education.

(2) Position : promotion to position is postponed for 12 (twelve) months or;

(3) Rank : promotion is postponed for 2 (two) periods.

(b) Sentenced to a conditional criminal sentence, resulting in:

- (1) Education: postponed from attending Dikbangum/Susfung/Susjab and other equivalent education for 12 (twelve) months after fulfilling the requirements to attend education.
 - (2) Position/rank (alternative)
 - i. Position: postponed promotion for 24 (twenty four) months or
 - ii. Rank: postponed promotion for 3 (three) periods.
 - (c) Sentenced to imprisonment of up to three months, resulting in:
 - (1) Education: postponed from attending Dikbangum/Susfung/Susjab and other equivalent education for 12 (twelve) months after fulfilling the requirements to attend education.
 - (2) Position/rank (alternative)
 - i. Position: postponed promotion of 30 (thirty) months or
 - ii. Rank: postponed promotion for 4 (four) periods.
 - (d) Sentenced to a prison sentence of more than three months but is still maintained in the TNI AD service, resulting in:
 - (1) Education: postponed from attending Dikbangum/Susfung/Susjab and other equivalent education 12 (twelve) months after fulfilling the requirements to attend education.
 - (2) Position/rank (alternative)
 - i. Position: postponed promotion to 36 (thirty six) month
 - ii. Rank: postponed promotion for 5 (five) periods.
 - (e) Sentenced for more than three months, and if according to the consideration of the competent authority the soldier can no longer remain in the army service of the Army, then Disrespectful Dismissal from the military service is proposed through the DKP session.
- 2) For non-commissioned officers / enlisted.
- (a) Sentenced to a fine or a substitute imprisonment, resulting in:
 - (1) Education: Postponed from participating in the Dikcapa/Dikcabareg selection for 12 (twelve) months after fulfilling the requirements to attend education, or
 - (2) Rank : promotion is postponed for 2 (two) periods.
 - (b) Sentenced to a conditional criminal sentence, resulting in:
 - (1) Education: Postponed from participating in the Dikcapa/Dikcabareg selection for 18 (eighteen) months after fulfilling the requirements to attend education, or
 - (2) Rank : promotion is postponed for 3 (three) periods.
 - (c) Sentenced to imprisonment of up to three months, resulting in:
 - (1) Education: Postponed from participating in the Dikcapa/Dikcabareg selection 24 (twenty four) months after fulfilling the requirements to attend education, or
 - (2) Rank : promotion is postponed for 4 (four) Periods.
 - (d) Sentenced to a prison sentence of more than three months but is still maintained in the TNI AD service, resulting in:
 - (1) Education: Postponed from participating in the selection of Dikcapa/Dikcabareg 30 (thirty) months after fulfilling the requirements to attend education, or
 - (2) Rank : promotion to 5 (five) periods is postponed.
 - (e) Sentenced to a prison sentence of more than three months, and if according to the opinion of the competent authority the soldier can no longer be retained to remain in the TNI AD service, Disrespectful Dismissal from the military service is proposed through a staff meeting.

c) Against TNI AD Soldiers who violate the law category III.

The category of TNI AD Soldiers whose cases are still in the process of settlement/examination and there has been no decision from Ankum or court decisions, resulting in Officers/Non-commissioned Officers/Tamtama:

- 1) Education: Education cannot be enrolled until there is a decision on punishment that has permanent legal force.
- 2) Position: Not promoted to position until there is a verdict that has permanent legal force
- 3) Rank: No promotion in rank is proposed until there is a final and binding sentence.

To determine the severity of the administrative sanctions that will be imposed on soldiers who commit violations, it is assessed from the severity of the sentences imposed by Ankum as well as court decisions. The heavier the sentence, the more severe the administrative sanctions applied.

Follow This desertion is regulated in Article 87 of the Criminal Code, namely:

1) Threatened for desertion, military:

The 1st, who leaves with the intention of permanently withdrawing from his service obligations, avoiding the danger of war, crossing into the enemy or entering military service in a country or other power without being justified for it.

2nd, who because of his fault or intentionally absent without permission in peacetime longer than 30 (thirty) days, in war time longer than four days.

The 3rd who intentionally does not attend without permission and therefore does not participate in carrying out part or all of an ordered trip, as described in Article 85-2.

- 2) Desertion carried out in peacetime is punishable by a maximum imprisonment of two years and eight months.
- 3) Desertion committed in time of war is punishable by a maximum imprisonment of eight years and six months.

Acts of absence of military members from one place to carry out official duties are determined as a crime, because the appreciation of discipline is very urgent in military life because discipline is the backbone of military life. It is different with the life of non-military organizations, that the act is not a crime, but as a violation of organizational discipline.¹⁰

The meaning of the formulation of the act of withdrawing for good if it is observed from his service obligations, at a glance the act shows that the military member who has deserted (the act) will not return to his place of duty which must be interpreted that the military member contains the will that he is there is no longer any desire to remain in military service.

The forms of desertion are mentioned in the book of the TNI Legal Development Agency based on the provisions of Article 87 of the KUHPM there are 3 (three) forms of desertion, namely:

1. Pure forms of desertion, namely desertion for purposes include:

- a. Go with the intention of permanently withdrawing from service obligations. The meaning of forever is never to return to the place of duty. From the fact that the perpetrator has worked in a certain office or company without an agreement with the head of the company, that work is temporary before he returns to his unit. Go with the intention of avoiding the dangers of war. It means a military man who leaves with the intention of avoiding danger in battle by running away, in an unspecified time, such an action can be said to be desertion in time of war.
- b. Go with the intention of crossing over to the enemy. To cross over to the enemy is the intent or purpose of the perpetrator to go and side with the enemy whose purpose can be proven (for example before his departure he revealed to his close friends to go on the side of the enemy), then the perpetrator has deserted.

- c. Go illegally enter foreign military service. The definition of entering military service if the purpose of the perpetrator is to enter the power of other troops, laskars, partisans and so on from a rebel organization related to espionage issues, this action includes the crime of desertion.
2. Forms of desertion due to time as an increase in crime from absenteeism without permission, namely:
 - a. Unlawful absence due to his/her fault, the duration of which exceeds 30 (thirty) days of peace time, for example: a member of the military who commits a crime of intentional or intentional absence in peacetime for 30 days continues.
 - b. Invalid absence due to his/her fault, longer than 4 (four) days during war, for example, a military officer who commits the crime of intentionally absenteeism when the State is in a state of war or the military is being assigned to a unit in a conflict area.
3. Form of desertion because as a result. This is as referred to in Article 87 paragraph (1) 3, generally included in the meaning of Article 85 2 plus the presence of an element of intent on the part of the perpetrator.

According to SR Sianturi, there are four kinds of ways or conditions that are formulated as a form of pure desertion, namely:

- a. Military members who leave with the intention (oogmerk) to permanently withdraw from their service obligations;
- b. Military members who leave with the intention of avoiding the dangers of war;
- c. Military members who leave with the intention of crossing over to the enemy; and
- d. Members of the military who leave with the intention of entering military service in a country or other power without being justified in doing so.

As is well known, one element of every crime is against the law, either explicitly or implicitly.¹¹ The element of being against the law in Article 87 paragraph (1) 1 is only implicitly formulated which can be concluded from one of these purposes: To abstain from (zich verwijderen); Hiding away from; and Continuing the absence contained for the perpetrator and must be associated with the act of his departure. Based on this, if a member of the military leaves his place of duty and has received leave of absence, but it turns out later that the military member intends not to return to his place of duty forever, the act is already against the law even though his departure was "with permission". and at the same time such an act or deed has fulfilled the elements of the crime of desertion. Article 87 paragraph (1) 2 stipulates that those who are guilty of or intentionally absent without permission in a time of peace longer than 30 (thirty) days, in a time of war longer than four days. Based on this article, it can be understood that the time limit for desertion is thirty days. Desertion committed in accordance with Article 87 of the Criminal Procedure Code, the sanctions are imprisonment and dismissal from members of the military, because there is a criminal threat in that article. If absenteeism is carried out for less than 30 (thirty) days or at least one day, then it cannot be considered as a criminal act of desertion but is called absent without permission which can be resolved by military discipline law (for example due to late attendance in military units. 75 Absence without permission for one day here is for 1 x 24 hours. As a benchmark for determining absenteeism, it is calculated from being absent at the apple, or when it is necessary/important to be absent at the designated place to carry out the tasks assigned to him.¹²

Administratively, based on the Juklak Kasal, it is stated that deserters who are more than 30 (thirty) days or at least on the 31st day have been declared deserters. The desertion referred to here is that which is punishable by punishment and dismissal, which is not a legal settlement of military discipline because the time has passed for more than 30 (thirty) days or at least the 31st day since the desertion was declared.¹³

TNI members who will be sentenced to disciplinary action must meet the conditions stipulated in the provisions of Article 5 of Law No. 26 of 1997 concerning Military Discipline (hereinafter abbreviated as the TNI Soldier Discipline Act). Article 5 of the TNI Soldier Discipline Law, asserts, "Violations of soldier discipline are serious disobedience and disobedience to soldiers who are based on the Sapta Marga and the Soldier's Oath to carry out their duties and obligations in accordance with the rules or procedures for the life of soldiers".

The forms of desertion carried out by members of the TNI or members of the military as referred to above can be applied to the perpetrators of the provisions of Article 88 of the KUHPM.

(1) The maximum penalty imposed in Articles 86 and 87 is doubled:

1. If at the time of committing the crime five years have not elapsed, since the perpetrator has served all or part of the sentence imposed on him by a decision for desertion or intentionally absent without permission or since the sentence was entirely abolished for him, or if when he committed the crime his right to carry out the sentence has not expired.
2. If two or more people, each for themselves in committing one of the crimes mentioned in Articles 86 and 87, go together or as a continuation of an evil conspiracy.
3. If the perpetrator is a military commander in command.
4. When he commits a crime he is in service.
5. When he goes to or abroad.
6. If he commits the crime by using a sea boat, airplane, or vehicle belonging to the armed forces.
7. If he commits the crime by bringing with him an animal used for the needs of the army, weapons, or ammunition.

(2) If the crime referred to in Article 86 or the crime of desertion in a state of peace is accompanied by two or more of the circumstances in paragraph (1) numbers 1 to 7, then the maximum penalty as specified in that paragraph is increased by half.

The purpose of the article above is weighting. The weighting referred to in Article 88 paragraph (1) Number 1 KUHPM is commonly called repetition or receive, namely, the perpetrator has already been sentenced by a judge for committing a crime similar to the crime he is currently committing, then in a case like this, desertion or absence is illegally committed. Purposely. The act can only be said to be repeated if the expiration date of the crime has not expired. The grace period of expiration (verging) according to the Criminal Code for all violations after 1 (one) year; for crimes punishable by fines, imprisonment or imprisonment for a maximum of 3 (three) years, the expiration of which is after 6 (six) years; for crimes punishable by imprisonment for more than 3 (three) years, the expiration date is 12 (twelve) years; and for crimes that are punishable by death or life imprisonment after 18 (eighteen) years. However, specifically for the crime of desertion, the expiration period is 12 (twelve) years in accordance with the provisions of Article 41 of the Criminal Procedure Code.¹⁴The purpose of Article 88 paragraph (1) Number 2 of the Criminal Procedure Code above, the weighting is due to cooperation between the perpetrators, either consciously or unconsciously and it is not necessary for these crimes to occur at the same time. The weighting referred to in Article 88 paragraph (1) Number 3 of the Criminal Procedure Code is given if the person who requires a crime intentionally does not attend illegally for a member of the military who holds the leadership. The military member in command is an independent force.¹⁵

The weighting referred to in Article 88 paragraph (1) Number 4 KUHPM is for members of the military who are doing service where they are actually in a state of carrying out their official duties. The meaning of carrying out the service is broader than the meaning of carrying out a task. The thing that is also burdensome for the perpetrator in Article 88 paragraph (1) Number 5 of the Criminal Code if the crime of desertion is not illegally present is carried out by going abroad or being carried out abroad or deserting the territory of the Republic of Indonesia. Aggravating Article 88 paragraph (1) Number 6 if the crime is

committed by carrying a boat or ship, airplane, or vehicles belonging to the TNI. This crime may be an act that is a series of criminal acts, namely in addition to desertion, also commit theft of military equipment. The aggravating thing referred to in Article 88 paragraph (1) number 7 of the KUHPM above is that the crime was committed by bringing animals, weapons or gunpowder that should have been used for the benefit of the TNI. The animals referred to here are animals that can be used for the benefit of the TNI, such as horses, dogs, carrier pigeons, and others that are considered important to help fight in difficult terrain situations.¹⁶ While the intent of the provisions of Article 88 paragraph (2) of the Criminal Procedure Code determines things that are even more burdensome until the threat of punishment is increased by half, after the sentence in Article 88 paragraph (2) of the Criminal Procedure Code is doubled. The aggravating thing is if the perpetrator commits a crime that is accompanied or illegally because it is intentional, accompanied by two or more people from the provisions as referred to in Article 88 paragraph (1) of Numbers 1 to 7 of the KUHPM.¹⁷

General criminal acts committed by soldiers can be applied to general criminal law. Thus, it is called TNI AD Soldiers committing a general crime if the soldier's actions are not regulated in the KUHPM but are regulated in other provisions, for example: Law No. 1 of 1946 concerning the Criminal Code (KUHP), Law No. 23 of 2004 concerning the Elimination of Domestic Violence and so on. Military criminal sanctions in military legislation are: death penalty, imprisonment, confinement and imprisonment as the main crime. In addition, if necessary, there is an additional penalty: dismissal or PDTH (Disrespectful Dismissal) by Anjum (the superior who has the right to punish. This provision is contained in Article 1 paragraph 25 of Government Regulation No. 39 of 2010 concerning Administration of Indonesian National Army soldiers. Criminal sanctions are all reactions to violations of the law determined by law starting from the detention of the suspect and the prosecution of the defendant to the imposition of a verdict by the judge, while criminal sanctions according to the terminology of criminal law are the legal consequences of violating criminal provisions in the form of crimes or actions. Military members as the subject of a military person's criminal acts include the subject of general crimes and also the subject of military crimes. In the event of a mixed military crime (gemengdemilitairedelict), the military is simultaneously the subject of a general crime and a military crime that is also concurrently (eendaadsesamenloop, concursusidealis). If you pay attention to 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 case mentioned above, of course, the application of general crimes with lighter penalties is desired. However, Article 63 of the Criminal Code provides otherwise: the application of the most severe basic criminal provisions (first paragraph), or the application of special criminal provisions (second paragraph).¹⁸

That one element of every crime is against the law, whether it is explicitly or implicitly formulated. See the Supreme Court's decision. no. 30/K/Kr/1969 dated 6-6-1970. In Article 87 (1) the 1st elements are against the law only implicitly formulated which can be concluded from one of the aforementioned purposes 1), 2) and 3) contained in perpetrator and which must be associated with the act of his departure. A military person who intends to permanently withdraw from his service obligations, avoiding the danger of war, as long as the intention is in his own heart, is not realized by a real action, so long as that intention cannot be said or labeled as an act that is against law. Likewise the act of leaving, Article 87 paragraph (1) point 2. In this one sub-paragraph, the same sentence is formulated and the same punishment is imposed, namely two years and eight months, for absenteeism without permission that exceeds the time limit as referred to in Article 85 point 1 and Article 86 point 1, even though the psychological elements are different. In Article 85 point 1 it is determined because of his fault and Article 86 point 1 on purpose, both of which are in a state of peace. Likewise, Article 85 point 3 is determined because of his fault and Article 86 point 2 intentionally, both in time of war, are both threatened with a maximum sentence of eight years and six months. Of course, this is not meant to equate offense-culpa with offense-dolus, but only to simplify the formulation. The

determination of the period of absence specified in this sub-paragraph is a logical continuation of Articles 85 and 86, although the determination of the time limits associated with the different articles creates a basic ambiguity, from a legal point of view. In other words, the determination of the 30-day absence period as a crime under Article 85 point 1 or Article 86 point 1, compared to 31 days absence as a crime of desertion which results in a very different maximum penalty, does not show a balance. In order to cover these deficiencies (leemten), the role of military judges is very large in this regard, which inevitably requires a balance between the decisions of one judge against another without ignoring the differences in the cases they face.

Another thing that needs attention in the context of implementing Article 87 paragraph (1) point 2 is, regarding the possibility of changing circumstances while the crime is in progress. An example of a case of an offender committing the crime of intentional absence in peacetime for 30 days continues. Incidentally on the 31st day by the Government announced the state of war. Then the perpetrator on the 35th day voluntarily reported himself back or was arrested. Has the perpetrator only committed the crime in Article 86 point 1 which continues with the crime in Article 86 point 2? Or have committed the crime of desertion even though it should be considered only as desertion in peacetime? There are scholars who emphasize the solution to the element of circumstances as expressly formulated and associated with a time limit. If this element of the situation is guided, there is indeed no other choice but to view the crime as a continuing crime from Article 86 point 1 to Article 86 point 2, linked to Article 64 of the Criminal Code. If that line of thinking is acceptable, then solving the sample case requires us to view the crime as a crime of desertion. Article 87 paragraph (1) point 2 in conjunction with paragraph (2) if 30 days is the benchmark, or Article 87 paragraph (1) item to -2 jo paragraph (3) if 4 days are used as a benchmark. For the example of the case, it is more appropriate to apply Article 87 paragraph (1) point 2 in conjunction with paragraph (2), given that the crime was initiated (deliberately). If the crime begins in a dwp state, then the provisions of Article 87 paragraph (1) point 2 in conjunction with paragraph (3) are applied, considering that the psychological element of the perpetrator actually begins. indeed there is no other choice but to view the crime as a continuing crime from Article 86 point 1 to Article 86 point 2, linked to Article 64 of the Criminal Code.

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IV. CONCLUSION

Criminal law policies against desertion crimes committed by members of the Indonesian National Armed Forces explained in the Military Criminal Code, namely: the understanding of the criminal act of desertion or forms of desertion is clearly described in Article 87 of the Criminal Procedure Code, and the punishment for members of the TNI who become the perpetrators of the crime of desertion is regulated in Article 88 of the Criminal Procedure Code. The implementation of military law against the perpetrators of the criminal act of desertion as a Military Member (TNI) carries a heavier penalty than the threat of punishment contained in the Criminal Code (considered that it does not fulfill the sense of justice); because the military is armed to maintain security; desertion is used. As for the form of desertion, it can be seen in Article 87, consisting of a purely permanent desertion from his service obligations, avoiding the danger of war; to cross over to the enemy and enter military service in a country or other power without being justified for it and desertion as an escalation of the crime, absenteeism without permission, on purpose for a period of 30 consecutive days. As for the crime of desertion in the Criminal Code Article 124 (3), Article 136 and Article 165; Article 124 (3) to 2 above, among others, states: The death penalty or imprisonment for life or temporarily twenty years is threatened if the perpetrator encourages or encourages desertion in the military community (crimes against state security).

Obstacles in the implementation of military law against members of the Indonesian National Armed Forces (TNI) who commit criminal acts of desertion are broadly due to the fact that many investigations conducted by Military Police investigators do not meet formal and material requirements. and the role of the Military Prosecutor in processing cases for TNI AD, TNI AL and TNI AU soldiers is less than optimal, and additional investigations carried out by the Military Prosecutor are often not carried out because the Suspect/Witness is attending education, operational duties, transfers, and others. The solution to these obstacles is to increase the capacity of the Military Police human resources in the technical field of investigation so that the case files delegated to the Military Oditurat can meet the formal and material requirements and Improving the coordination and coordination between the Military Prosecutor and the Anku in processing cases when receiving case files. and additional investigations in the process of resolving military criminal cases at the Military Courts as well as Anku's understanding of the regulations regarding TNI soldiers. It is highly expected that law enforcement officers, especially those within the Military Courts, should be able to carry out their duties and functions as law enforcement tools who are truly law enforcers, especially to judges who examine and decide cases in their decisions beginning with "For the sake of Justice Based on the Almighty God. One here, the Judge rests his decision on God Almighty as his responsibility for the hereafter." It is highly expected that members of the military (TNI) as far as possible

avoid despicable acts; can be self-defeating; because if you commit the crime of desertion and it is proven that the threat of punishment is very heavy, I hope you don't do it.

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