

Law Enforcement For The Criminal Acts of Desertion Committed By Members of The TNI

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ABSTRACT

The purpose of this research is to enforce the law on the crime of desertion committed by members of the Indonesian National Armed Forces (TNI). This research method presents an analysis of the verdict on the crime of desertion. Legal research that analyzes several library and secondary materials is merely normative legal research. Result 2. The implementation of the judge's sentence against the perpetrator in this case is in accordance with the elements of Article 87 paragraph (1) 2 in conjunction with paragraph (2), where the judge has considered both the facts established during the trial, witness testimony and available evidence, as well as the judge's confidence in issuing a verdict that will have a deterrent effect on the defendant and instill fear in the convict and the soldiers.

Keywords: Judge, Law, Crime, TNI

1. INTRODUCTION

Considering the importance of national security, a strong national defense is required. To create a strong national defense, military strength is needed to carry out national defense duties professionally (Budiman et al., 2021). This defense is certainly built by strengthening the defense equipment operated by military personnel, in this case the Indonesian National Armed Forces (TNI), who demonstrate a high level of loyalty and obedience to their leaders and orders. However, the reality is that not all TNI soldiers demonstrate high levels of loyalty and obedience to their obligations to carry out their duties, violating the duties and principal functions of the TNI as implied in the Sapta Marga (Servant's Principles) and the Soldier's Oath. It is not uncommon for TNI members to commit criminal acts (Zaky & Al Mubarak, 2023).

The Republic of Indonesia is a country that proclaimed its independence on August 17, 1945. After its independence, the former colonialists had ambitions to re-colonize Indonesia through armed violence. At that time, people's struggle bodies, along with the regular Indonesian army, known as the Indonesian Republic Army (TRI), worked together to uphold sovereignty and safeguard the nation's independence (Purwantoro et al., 2024).

Indonesia as a state of law (*rechtstaat*) based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD NRI 1945) certainly has the ideal of creating a harmonious, peaceful, secure, and prosperous national and state life. Efforts to uphold state



sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia (hereinafter abbreviated as NKRI), and guarantee the safety of the entire nation from various types of threats to the integrity of the nation and state are one of the state defense efforts that cannot be separated from the role of various aspects of the state system, including the Indonesian National Army (hereinafter abbreviated as TNI). The formation of armed forces in modern countries is aimed at protecting and maintaining the sovereignty of the state and nation of a country (Al Mubarak, 2024).

The obligations of the TNI according to the Military Criminal Code (KUHPM) are to implement the State defense policy, organize military strategies and carry out military operations, develop TNI doctrine, organize TNI strength development and maintain operational readiness, maintain the sovereignty of the State's territory. The Military Criminal Code (KUHPM) reads (Chandra, 2020):

Due to military desertion;

1. 1st goes with the intention of withdrawing forever in fulfilling his service obligations, avoiding war, crossing over to the enemy, or without the right to enter the service of another country's army. 2nd due to his fault or intentionally being absent illegally in peacetime for more than 30 days and in wartime for more than 4 days. 3rd is guilty because he intentionally is absent illegally and because of that he causes him to not participate at all or only partially in a trip that has been ordered as mentioned in Article 85 no. 2 of the Criminal Code.
2. Desertion committed during peacetime is punishable by a maximum prison sentence of two years and eight months.
3. Desertion committed during wartime is punishable by a maximum prison sentence of eight years and six months.

The factors that cause TNI members to desert include 2 types, namely;

- 1) External factors include;
 - a. The striking difference in social status
 - b. Involved in an affair
 - c. Tired of the rules or want to be free
 - d. War trauma
- and. Have a lot of debt
- 2) Internal factors include;
 - a. Lack of mental training
 - b. Leadership crisis
 - c. Family separation

To resolve criminal acts within the Indonesian National Armed Forces (TNI), regulations are needed to achieve a way of acting between authorized officials in resolving criminal cases within the TNI (Sulistiyanto, 2011). Therefore, the KASAD Decree Number: SKEP/239/VII/1996 concerning Guidelines for the Settlement of Criminal Cases within the Indonesian National Armed Forces (TNI AD) was issued as an elaboration of the Pangab Decree Number: Skep/711/X/1989 concerning the settlement of criminal cases within the Armed Forces of the Republic of Indonesia (ABRI). The settlement of criminal cases that occur within the Armed Forces of the Republic of Indonesia (ABRI) passes through several stages or levels consisting of:

1. Investigation level:
2. Level of prosecution
3. Level of examination in court
4. Decision level.

Decision of the Commander of the Indonesian Armed Forces Number: Skep/04/P/II/1984 dated April 4, 1984 concerning the function of organizing the Military Police within the Indonesian Armed Forces (skep/711/X/1989). Military crimes are tried by military personnel as explained in Article 4 paragraph 1 of Law of the Republic of Indonesia No. 34 of 2004, namely the Indonesian National Armed Forces (TNI) consisting of the Indonesian Army, the Indonesian Navy, and the Indonesian Air Force, while general trials are carried out by civilians.

Military justice is a judicial system that is technically, administratively, and financially under the auspices of the Supreme Court, and has the authority to examine, try, and decide on criminal cases and TNI administrative disputes that occur in the military environment by TNI members based on the law or a joint decision of the TNI commander with the approval of the Ministry of Law and Human Rights.

2. RESEARCH METHODS

In this research, the data will be analyzed qualitatively-descriptively. According to Soerjono Soekanto, qualitative data analysis is a method of analysis that produces analytical descriptive data, namely what is stated by respondents in writing or verbally and also real behavior, which is researched and studied as a whole. Meanwhile, Descriptive is a non-hypothetical research so that in the research steps there is no need to formulate a hypothesis, while qualitative is data that is described in words or sentences that are separated according to categories to obtain conclusions. According to Sunarto's definition: Qualitative descriptive is research that seeks to describe and interpret existing

conditions or relationships, emerging opinions, ongoing processes, ongoing consequences or developing trends.

3. RESULTS AND DISCUSSION

Law Enforcement Against the Crime of Desertion

Military criminal law essentially contains regulations governing Indonesian National Armed Forces (TNI) soldiers, which carry sanctions for violations. These military legal principles evolve based on the needs of the situation and conditions, as well as being influenced by experience. One crime frequently encountered within military units is desertion (Putra, 2013). The crime of desertion is an act committed by a defendant, in this case a TNI soldier, who leaves his unit without proper permission from a superior officer. The crime of desertion is also a purely military crime, where a purely military crime is a crime committed only by the military due to its specific military nature. Military criminal law is called special in order to distinguish it from General Criminal Procedure Law, which applies to everyone. Military Criminal Law also contains regulations that deviate from the provisions stipulated in Criminal Law and only apply to special groups (the military) or individuals because the regulations are directed at them.

Furthermore, the crime of desertion is characterized primarily by an unauthorized absence by a military personnel from a designated location, where the military personnel are supposed to be present in a unit to carry out their duties. This absence can involve traveling, hiding, defecting to the enemy, entering the military service of another country, or intentionally leaving one behind.

In the process of examining the crime of desertion, several obstacles are often encountered, one of which is that the defendant who committed the crime of desertion cannot be found, which causes the examination to continue without the presence of the defendant (in absentia).

Regarding the examination of cases in absentia, this is regulated in Article 141 paragraph (10) and Article 143 of Law Number 31 of 1997 concerning Military Justice, namely (Sugistiyoko, 2018):

1. Article 141 paragraph 10.

In cases of desertion where the accused is not found, the examination is carried out without the presence of the accused.

2. Article 143

In the case of the crime of desertion as referred to in the Military Criminal Code, where the defendant runs away and is not found again for 6 (six) consecutive months and has been legally summoned 3 (three) times in a row, but does not appear in court without any reason, an examination can be carried out and a decision can be made without the defendant's presence.



In cases of the crime of desertion as referred to in the Military Criminal Code, where the accused runs away and is not found again for 6 (six) consecutive months and has been legally summoned 3 (three) times in a row, but does not appear at the trial without any reason, an examination can be conducted in absentia.

Based on the explanation of Article 143 of Law Number 31 of 1997 concerning Military Justice, it is explained that what is meant by "examination without the presence of the Defendant in the sense of in absentia" is an examination carried out so that the case can be resolved quickly in order to maintain the discipline of Soldiers in order to maintain the integrity of the troops, including in the case of the transfer of cases where the Defendant has never been examined because he fled from the beginning and was not found again within 6 (six) consecutive months, for its validity it must be strengthened by a statement from the Commander or Head of the Unit. The calculation of the grace period of 6 (six) consecutive months is calculated from the date of transfer of the case file to the Court (Matswa et al., 2014)

Case Decision Decision number: 64-k/pm.III-12/AL/IV/2024 Military Court III-12 Surabaya**1. Case Position**

Based on the research observed from the Decision Case Number 64-k/pm.III-12/AL/IV/2024 That SONY SUSANTO is the Defendant at the times and in the places mentioned below, namely on October 2, 2023 until January 17, or at least in other places included in the jurisdiction of the III-12 Surabaya Military Court has committed the crime of desertion. Due to his fault or intentionally carrying out an absence without permission during peacetime for longer than 30 days.

2. Military Prosecutor's Indictment

Based on the Decision to hand over the case from Danpomal V Surabaya Number BP-02/I-1/I/2024 dated January 17, 2024 and after studying the case files on behalf of the Defendant:

Full name : SONY SUSANTO.

Rank, NRP : Kopka Mar, 85018.

Position : Satma.

Unity : Kodikmar Kodiklatal.

Place and date of birth : Surabaya, 23 October 1987.

Gender : Man.

Citizenship : Indonesia.

Religion: Islam.

Residence : Jl. Ketilang Lama, Gg IA/29 G, Surabaya



It was concluded that there was sufficient reason to bring the defendant before the III-12 Surabaya Military Court, with the charge of having committed a series of acts as follows:

1. That the Defendant is an Indonesian Navy soldier who served at Kodikmar Kodiklatal with the position of Private Satma Kodikmar Kodiklatal until the time of committing the act that is the subject of this case with the rank of Kopda Mar NRP 85018.
2. That the Defendant has left the Kodikmar Kodiklatal unit without valid permission from the Dankodikmar Kodiklatal or other authorized superior since October 2, 2023 and until now has not returned to the unit.
3. That Witness-1 Captain Mar Nasikhin and Witness-2 Peltu Mar Supangat did not know the reason why the Defendant left the Unit without valid permission from the authorized Superior and during the time the Defendant left the Unit without valid permission from the Superior, the Defendant never informed the Unit about his whereabouts either by letter or telephone.
4. That while the Defendant left the Unit without valid permission from the authorized Superior, the Unit has made efforts to search for and arrest the Defendant, but the Defendant has not been found until now, so that on November 9, 2023 the Unit reported the Defendant's actions to the Military Police of Lantamal V Surabaya (according to Police Report Number LP-93/I-1/XI/2023/IDIK dated November 9, 2023).
5. That the Defendant has been absent without valid permission from the Dansatma Kodikmar Kodiklatal or other authorized superiors since October 2, 2023 until the Defendant was reported to the Pomal Lantamal V Surabaya on November 9, 2023 or for 39 (thirty-nine) consecutive days, this is in accordance with the absence list of Satma Kodikmar Kodiklatal members.
6. That during the time the Defendant left the Unit without permission from the Unit Commander or other authorized superior, the Unitary State of the Republic of Indonesia was in a state of peace and the Defendant and the Defendant's unit were not being prepared or carrying out Military Operations duties nor was the Unit being prepared to carry out Military Operations duties.

Demanding:

- a. Witness

The witnesses in this case have been legally and properly summoned based on the provisions of the law, however, until the appointed time the witnesses were unable to attend the trial due to special duties from their units, therefore, based on the provisions of Article 155 of Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice, the statements of the witnesses in the Minutes of Examination accompanied by the Minutes of Oath-Taking were read out, the main points of which are as follows:



Witness-1:

Full name : NASIKHIN.

Rank, NRP : Kapten Mar, 19851/P.

Department : Palaksa Satma.

Unity : Kodikmar Kodiklatal.

Place and date of birth : Pemalang, October 5, 1972.

Gender : Man.

Citizenship : Indonesia.

Religion: Islam.

Residence : Graha Sunan Ampel Phase 2 Block D 41 Wiyung Subdistrict, Wiyung District, Surabaya.

Basically explains as follows:

1. That the Witness knew the Defendant around April 2023 when the Witness started serving at Satma Kodikmar Kodiklatal as a Superior and Subordinate and there is no family relationship.
2. That the Witness knows that the Defendant has left the Unit without permission from the Unit Commander or other authorized superior since October 2, 2023 until now he has not returned to the Unit.
3. That the Witness did not know about the activities carried out by the Defendant while leaving the Unit without permission from the authorized superior and the Defendant never contacted the Unit either by letter or telephone regarding his whereabouts.
4. That the Unit had conducted a search and arrested the Defendant but the Defendant was not found.
5. That the Witness does not know the reason why the Defendant left the Unit without permission from the authorized Superior.
6. That during the time the Defendant left the Unitary State without valid permission from the Dahsyat, the Unitary State of the Republic of Indonesia was in a state of peace and neither the Defendant nor the Defendant's Unit was being prepared to carry out military operations.

Witness-2:

Full name : SUPANGAT.

Rank, NRP : Peltu Mar, 89450.

Department : Don't Sell Bama.

Unity : Kodikmar Kodiklatal.

Place and date of birth : Cilacap 27 August 1978.



Gender : Man.

Citizenship : Indonesia.

Religion: Islam.

Residence : Kebonsari Rt. 2 Rw. 1 Candi District, Sidoarjo Regency.

Basically explains as follows:

1. That the Witness knew the Defendant around December 2019 when the Witness entered service at Kodikmar Kodiklatal as a Superior and Subordinate and there was no family relationship.
2. That the Witness knows that the Defendant has left the Unit without permission from the Unit Commander or other authorized superior since October 2, 2023 until now he has not returned to the Unit.
3. That the Witness did not know the whereabouts and activities carried out by the Defendant while leaving the Unit without permission from the authorized Superior and the Defendant never contacted the Unit either by letter or telephone.
4. That the Unit has made efforts to search for and arrest the Defendant but the Defendant was not found.
5. That the Witness does not know the reason why the Defendant left the Unit without permission from the authorized Superior.
6. That during the time the Defendant left the Unitary State without valid permission from the Dahsyat, the Unitary State of the Republic of Indonesia was in a state of peace and neither the Defendant nor the Defendant's Unit was being prepared to carry out military operations.

b. evidence, in the form of:

6 (six) sheets of attendance list for members of Satma Kodikmar Kodiklatal from October 2023 to November 2023 in the name of Kopda Mar Sony Susanto NRP 85018 Ta Satma Kodikmar Kodiklatal

c. Military Auditor's Demands

The demands of the Military Prosecutor which were read out before the Panel of Judges who examined and tried the case with the defendant SONY SUSANTO at the III-12 Surabaya Military Court:

1. The criminal charges (Requisitoir) of the Military Prosecutor submitted to the Panel of Judges, in essence the Military Prosecutor stated that the Defendant was legally and convincingly proven guilty of committing the crime of "Desertion in peacetime", as regulated and subject to criminal penalties in the provisions of Article 87 paragraph (1) 2 Jo paragraph (2) Jo Military Criminal Code.
2. Therefore, the Military Auditor requests that the Defendant be sentenced to:



- a. Principal criminal offense : Imprisonment for 1 (one) year.
- a. Additional punishment: Dismissed from military service Cq TNI AL.
3. Establishing evidence in the form of letters, namely: - 6 (six) sheets of attendance lists for members of the Satma Kodikmar Kodiklatal from October 2023 to November 2023 in the name of Kopda Mar Sony Susanto NRP 85018 Ta Satma Kodikmar Kodiklatal.
4. Charge the Defendant with court costs of Rp. 7,500.00 (seven thousand five hundred rupiah).
- d. Judge's Legal Considerations

Considering, that regarding the process of resolving the Defendant's case, who has been summoned to court several times but has never appeared so that the Defendant's case was decided in absentia on June 19, 2024, therefore the Panel of Judges, for that reason the Panel of Judges is of the opinion that the period of time the Defendant committed the act of absence without permission was from October 2, 2023 to November 9, 2023 and the Defendant's case was decided in absentia on June 19, 2024, then the Defendant's act of absence without permission was for approximately 8 (eight) months, which means longer than 30 (thirty) days.

Considering that the Defendant can only be found guilty if the Defendant's actions fulfill all the elements of the criminal act charged against him, and the Defendant can also be held responsible for all his actions.

Considering, that because the criminal act charged by the Military Auditor is a single indictment, this means that the law allows both the Military Auditor and the Panel of Judges to directly prove the single indictment.

Considering, that the criminal act charged by the Military Prosecutor in his sole indictment, Article 87 paragraph (1) Ke-2 Jo paragraph (2) of the Military Criminal Code contains the following elements:

The First Element : Military.

Second Element : Who due to his/her own fault or intentionally is absent without permission.

Third Element : In times of peace.

The Fourth Element : Longer than thirty days

The Panel of Judges expressed their opinion as follows:

The First Element : Military.

That what is meant by Military according to Article 46 of the Military Criminal Code is those who are bound to serve voluntarily in the Armed Forces and are required to serve continuously during the period of the service bond (called Military Conscription) or all other volunteers in the Armed Forces and Military Conscripts during their service (called Milwa).

Both Voluntary Military and Compulsory Military are subject to Military Justice, which means that the provisions of Military Criminal Law can be imposed/applied to them, in addition to the provisions of general criminal law, including the Defendant as a member of the Military/TNI.

That in Indonesia, what is meant by Military is the armed forces of a country which is regulated based on the statutory regulations of Article 1 number 20 of Law of the Republic of Indonesia Number 34 of 2004 concerning the TNI.

That a military person is marked by several identities, namely Rank, NRP (Central Register Number), Position and Unit and in carrying out his duties or when on duty he wears a uniform according to his mantra complete with rank insignia, unit location and other attributes.

That based on the statements of the witnesses under oath and the evidence presented to the trial and after connecting one with the other, the following legal facts were obtained:

1. That it is true that the Defendant is an Indonesian Navy soldier who served at Kodikmar Kodiklatal with the position of Private Satma Kodikmar Kodiklatal until the time of committing the act that is the subject of this case with the rank of Kopda Mar NRP 85018.

2. That it is true that until now the Defendant has never terminated or ended his service bond as a member of the TNI, this is strengthened by the existence of a Decree from the Commander of the Marine Education Command as Papera Number Kep/06/II/2024 dated March 22, 2024 as well as the statements of the Witnesses.

3. That it is true that at the time the Defendant committed the crime he was accused of, he was still on active duty as a TNI AL soldier, therefore the Defendant was subject to military criminal law. Thus, the Panel of Judges is of the opinion that the first element: "Military" has been proven legally and convincingly.

The second element : Who, due to his/her own fault, intentionally takes an absence without permission.

This article is an alternative, so the Panel of Judges will prove the elements in question according to the criminal act committed by the Defendant, namely intentionally.

The term "intentionally" (dolus) is not explained or interpreted in the Criminal Code. The interpretation of "intentionally" or "deliberately" is adjusted to developments and public legal awareness.

That intent (dolus) is part of a mistake (schuld). According to the explanatory memory (Memorie Van Toelichting) or MVT, intent is defined as "willing and realizing" (Willens en Wetens) that an action and its consequences will occur. This means that someone who carries out an action "intentionally" must want and realize the action and its consequences.



That what is meant by absence is that the perpetrator (the Defendant) committed an act/action of leaving, distancing himself, not being in a place that had been determined for him to carry out his duties in this case in the Defendant's Unit where the Defendant should have carried out the duties that were his responsibility.

What is meant by "without permission" means that the absence was carried out by the perpetrator without the permission/knowledge of his/her leader/commander, as is customary for every TNI member who intends to leave the unit, whether for official or personal reasons, is required to go through the permit procedures applicable to his/her unit.

That based on the statements of the witnesses under oath and the evidence presented to the trial and after connecting one with the other, the following legal facts were obtained:

1. That it is true that the Defendant has left the Kodikmar Kodiklatal Unit without valid permission from the Dankodikmar Kodiklatal or other authorized superior since October 2, 2023 and until now has not returned to the Unit.
2. That it is true that Witness-1 Captain Mar Nasikhin and Witness-2 Peltu Mar Supangat did not know the reason why the Defendant left the Unit without valid permission from the authorized Superior and during the time the Defendant left the Unit without valid permission from the Superior, the Defendant never informed the Unit about his whereabouts either by letter or telephone.
3. That it is true that during the time the Defendant left the Unit without valid permission from the authorized superior, the Unit had made efforts to search for and arrest the Defendant, but the Defendant has not been found until now, so that on November 9, 2023 the Unit reported the defendant's actions to Danpomal V Surabaya (according to Police Report number LP-93/I-1/XI/2023/IDIK dated November 9, 2023).

Thus, the Panel of Judges is of the opinion that the second element: "Intentionally being absent without permission" has been proven legally and convincingly.

The third element: In times of peace.

That what is meant by peacetime is that during the time the perpetrator (Defendant) committed the act, the Unitary State of the Republic of Indonesia was not at war with another party and the Defendant's Unit was not being prepared or carrying out military operations as referred to in Article 58 of the Military Criminal Code.

That based on the statements of the witnesses under oath and the evidence presented to the trial and after connecting one with the other, the following legal facts were obtained:

1. That it is true that during the time the Defendant left the Unit without permission from the Unit Commander or the authorized Superior from October 2, 2023 until the Defendant was reported to

the Military Police Command of Lantamal V Surabaya on November 9, 2023 and until now the Defendant has not returned to the Unit, neither the Defendant nor the Unit were prepared to carry out military operations and the Unitary State of the Republic of Indonesia in a safe and peaceful state.

2. That it is true that during the time the Defendant left his Unit without permission from the Unit Commander or authorized superior, he did not take any inventory belonging to his Unit.

Thus, the Panel of Judges is of the opinion that the third element: "In times of peace" has been proven legally and convincingly.

Fourth element: Longer than thirty days.

That this element is a limitation of the period of absence carried out by the Defendant as a continuation/appointment in a logical action (in this case absence without permission in Article 85 of the Military Criminal Code). Where in this action of absence it is determined that the period of absence without permission, namely in peacetime, is longer than thirty consecutive days, is threatened with a heavier penalty.

Thus, the time limit for the Defendant's absence from his Unit without permission from the Unit Commander or other authorized superior refers to the calculation of days according to the calendar and the absence must be at least one day and no longer than thirty days and must be carried out/carried out by the Defendant continuously without any time breaks.

The witnesses under oath and the evidence presented to the court and after connecting one with the other, the following legal facts were obtained:

1. That it is true that the Defendant was absent from his Unit without permission from the Unit Commander or other authorized superiors from October 2, 2023 until the Defendant was reported to the Military Police of Lantamal V Surabaya on November 9, 2023 or for 39 (thirty-nine) consecutive days, according to Police Report Number LP-93/I-1/XI/2023/IDIK dated November 9, 2023 and until the Defendant's case was transferred and tried at the III-12 Surabaya Military Court and the case was decided by the Panel of Judges in Absentia on June 19, 2024, the Defendant had not returned to his Unit.

2. That it is true that the Defendant left the Unit without permission from the Unit Commander or other authorized superior for 39 (thirty-nine) days according to the Police Report dated November 9, 2023 and even to the point of having his case transferred to the III-12 Surabaya Military Court by the Military Auditor on April 2, 2024, his case was tried and decided on June 19, 2024, which was longer than 30 (thirty) days.

Thus, the Panel of Judges is of the opinion that the fourth element: "Longer than thirty days" has been proven legally and convincingly.



and. Verdict

After the Military Court Panel of Judges considered the above matters, the Panel of Judges then decided on this case, the following is an excerpt from the decision:

JUDGING

1. Declaring that the above Defendant, namely SONNY SUSANTO, Kopda Mar NRP 85018, has been legally and convincingly proven guilty of committing the crime of "Desertion in peacetime".

2. To sentence the Defendant therefore with:

Principal Criminal Code: Imprisonment for 1 (one) year.

Additional Penalty: Dismissed from Military service.

3. Establishing evidence in the form of a letter, namely:

6 (six) sheets of attendance list for members of Satma Kodikmar Kodiklatal for October 2023 to November 2023.

Stay attached in the matter file.

4. Charge the Defendant with court costs in the amount of Rp. 7,500.00 (seven thousand five hundred rupiah).

f. Author's Analysis

In any case, there are several important aspects to consider during the proceedings. Absolute competence and relative competence are crucial in proceedings. Absolute competence is the authority of a judicial body to examine, hear, and decide a case. Relative competence, on the other hand, is the court's authority to adjudicate a case based on the jurisdiction of the case.

Furthermore, regarding absolute competence, judicial bodies or judicial authorities are regulated in the Republic of Indonesia Law No. 48 of 2009 concerning Judicial Power, including the following:

1. Article 18 states that judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court.

2. Article 20 states that:

a. The Supreme Court is the highest state court of the judicial bodies within the four judicial environments as referred to in Article 18.

b. The Supreme Court has the authority to:

1. To adjudicate at the cassation level against decisions rendered at the final level by courts under the Supreme Court, unless the law stipulates otherwise.

2. Testing laws and regulations under the law against the law; and c. Other powers granted by law.



Article 25 states that:

1. The judicial bodies under the Supreme Court include judicial bodies in the general courts, religious courts, military courts and state administrative courts.
2. The general courts as referred to in paragraph (1) have the authority to examine, try and decide criminal and civil cases in accordance with statutory provisions.
3. The religious courts as referred to in paragraph (1) have the authority to examine, try, decide and resolve cases between people of the Muslim faith in accordance with statutory provisions.
4. The military court as referred to in paragraph (1) has the authority to examine, try and decide on military criminal cases in accordance with statutory provisions.
5. The state administrative court as referred to in paragraph (1) has the authority to examine, try, decide and resolve state administrative disputes in accordance with the provisions of statutory regulations.

In the case that the author is researching, namely the case of the crime of desertion, the absolute competence that has the authority to examine and try the case of desertion is the military court, this is indicated by the nature of the crime of desertion which is a pure crime committed by a military person.

After the author analyzed the Military Prosecutor's indictment in the case, the Military Prosecutor's indictment has fulfilled the nature and essence of an indictment, where the indictment is described carefully, clearly, and completely regarding the identity of the defendant, a description of the defendant's actions and the time, date, and place where the criminal act took place. This is the author's basis that the indictment has fulfilled the formal requirements. Seeing the application of material criminal law which is also linked to the existing facts, the defendant is declared to have violated Article 87 paragraph (1) Ke-2 Jo. paragraph (2) of the Criminal Code because the elements in the article are fulfilled, namely:

- a. Military.
- b. Due to his/her fault or intentionally being absent without permission.
- c. In peacetime.
- d. Longer than thirty days.

Based on the explanation above, the defendant has been legally and convincingly proven guilty of committing the crime of desertion in accordance with Article 87 paragraph (1) Ke-2 Jo. paragraph (2). This has also been stated in the decision of the Panel of Judges.

Furthermore, a decision cannot be separated from the important role of a judge in handing down a criminal sentence. In handing down a decision, a judge is required not to ignore the laws or norms and



regulations that develop in society as regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

When issuing a verdict, a judge must be able to classify the sentence imposed on the defendant. Judges are required to be able to examine the facts presented in court and then use them as a basis for issuing a verdict. Becoming a judge is not easy, as in issuing a verdict, a judge has the freedom to decide and determine a case.

Talking about the decision in a case, there are 3 (three) types of decisions, namely an acquittal, a release, and a criminal decision. Based on these types of decisions, in the case of the crime of desertion with the defendant SONY SUSANTO, the Panel of Judges granted the demands of the Military Prosecutor by imposing a criminal decision with a principal sentence of 1 year in prison and an additional sentence of dismissal from military service. In a military case, one of the additional sentences is dismissal, the reasons why the defendant was dismissed from TNI service have been stated in the judge's considerations in his decision as follows:

Considering that before reaching the final consideration in adjudicating this case, the Court wishes to assess the nature, essence and consequences of the Defendant's attitude and actions as well as other influencing factors as follows:

1. That the nature of the Defendant's actions is a manifestation of the Defendant's undisciplined actions, reflecting an attitude of not complying with or ignoring the rules clearly determined by the unit.
2. That with the Defendant's relative absence/leaving of the Unit for a long time up to this trial, the Defendant has not been present and there are no signs or desire of the Defendant to report himself or return to his Unit, there are indications that the Defendant no longer wants to serve in the TNI environment.
3. That with these indications, the Panel of Judges is of the opinion that the Defendant is no longer worthy of being retained in his official duties.
4. That the Defendant is not fit to be ordered to perform his duties, the Defendant must be dismissed from the TNI service, because it will have an impact on other soldiers and as a prevention against discipline in his Unit.

In this case, the examination was conducted without the presence of the defendant (in absentia), meaning the defendant could not be found until a final and binding decision was made. Regarding examination in absentia in criminal cases, this is regulated in Law No. 31 of 1997 concerning Military Justice (Miu, 2013):

- a. Article 141 paragraph (10)



In cases of desertion where the accused cannot be found, the examination is carried out without the presence of the accused.

b. Article 143

In the case of the crime of desertion as referred to in the Military Criminal Code, where the accused runs away and is not found again for 6 (six) consecutive months and has been legally summoned 3 (three) times in a row, but does not appear in court without any reason, an examination can be carried out and a decision can be made without the presence of the accused.

In this case, the Panel of Judges declared that the Military Prosecutor's charges had been legally and convincingly proven. This was stated in the Panel of Judges' decision as follows:

Considering that, because all elements of the Military Auditor's Indictment have been fulfilled, the Panel of Judges is of the opinion that the Military Auditor's Indictment has been legally and convincingly proven.

Considering, based on the matters described above which are facts obtained in the trial, the Panel of Judges is of the opinion that there is sufficient valid and convincing evidence that the Defendant is guilty of committing the following crimes:

"Military personnel who intentionally carry out an absence without permission during peacetime, for longer than thirty days". As regulated and threatened by Article 87 paragraph (1) Ke-2 Jo. paragraph (2) KUHPM

Furthermore, the reasons for the defendant to commit the crime of desertion are very diverse. Based on the author's observations regarding the case of desertion in absentia with case number: 35-K / PM.III-16 / AD / IV / 2019, regarding the reasons for the defendant to commit the crime of desertion, but because the case was carried out without the presence of the defendant (in absentia), the author has an opinion regarding the reasons for the defendant to commit the crime of desertion which explains that: "There are many reasons for the defendant to commit the crime of desertion, usually because there are personal problems. Personal problems can be debt problems, other cases such as immorality or those related to other women or he already has a view of life that he may think is good outside so the defendant is lazy, also a low level of discipline factor, besides the element of external influence due to external associations and the influence of friends "

Regarding the low level of discipline, this is one of the judge's considerations in making a decision, where a soldier who has a low level of discipline can harm the unit and can influence other soldiers in the Unit. The indiscipline of a soldier cannot be maintained within the scope of the TNI, this affects the discipline of a soldier because if the Defendant is not dismissed from Military service, other soldiers are influenced to commit similar crimes and consider this does not result in dismissal from



Military service. Furthermore, usually when a decision has permanent legal force, the implementation of the decision by the Panel of Judges is immediately carried out, but how is the implementation of the decision in an in absentia examination.

4. CONCLUSION

The crime of desertion is contained in Articles 87 and 89 of the Military Criminal Code, while the crime of desertion in an examination in absentia 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 military person leaves the unit for more than thirty consecutive days without valid permission from an authorized superior.

The implementation of the application by the Judge in determining the provisions for the perpetrator in this case is in accordance with the elements of Article 87 paragraph (1) Ke-2 Jo. paragraph (2) where the judge has considered both the facts in the trial, the statements of witnesses and the existing evidence, as well as the judge's confidence in issuing a decision which will later have a deterrent effect on the defendant, giving fear to the convict and the soldiers.

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