

Military Legal Responsibility for Members of the Indonesian Army Who Commit Dispersion

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ABSTRACT

This study aims to determine the form of criminal liability for military personnel who commit crimes, especially for deserters who return to their units. This research is normative, based on legal norms in laws, legal decisions, and norms applicable in society. Data is obtained from literature, legislation, and Military Court decisions. The analysis is conducted descriptively by examining the content and structure of positive law to understand the meaning of the rules used in resolving legal issues. The study results show that the form of criminal liability for deserters is regulated in Article 6a of the Military Criminal Code (KUHPM) with imprisonment, as well as dismissal from military service under Article 6b of the KUHPM. Additionally, deserters who commit crimes have the right to legal assistance.

INTRODUCTION

An organization based on rules and including the 'military' label has so far been viewed as a closed organization by most of the community. This view does not rule out the possibility of being directed at military justice which has so far been viewed by the community as a closed justice, thus giving rise to negative prejudice from the general public that all legal enforcement activities against guilty soldiers are not carried out fairly and legal practitioners consider the military court's decision in sentencing soldiers guilty of committing crimes to be relatively light.

In terms of law, military personnel have the same status as ordinary members of society, meaning that as citizens, all applicable legal rules apply to them, including criminal law, civil law, criminal procedure and civil procedure. The difference is that more specific regulations are still needed that are stricter and more severe for military personnel, this is because there are several acts that can only be carried out by soldiers that are originally military and do not apply to the general public, for example: refusing service orders, opposing superior orders (insubordination), and desertion.

The criminal acts mentioned above reflect the nature of a military man who ignores the ethics and rules of disciplinary law that apply in the TNI environment. A soldier should be required to be in the unit continuously during his service period and may not refuse or even fight against official orders. If he wants to leave the unit for a purpose, he must first obtain permission in accordance with the rules that apply in the TNI environment.

An absolute requirement in military life is to obey the TNI regulations and the official orders of each superior in order to uphold a life in the military that is full of high awareness. If these things are violated, it shows a military that is not good and irresponsible in upholding the Sapta Marga and the Soldier's Oath and if maintained will only shake the joints of discipline and order in the TNI environment.

Some acts of such serious nature, if committed by military members in certain areas, the threat of punishment under general criminal law is considered too light, because the military is the parent of a small part of the community which already has other provisions in its own courts, namely military courts or military courts.

Along with the rapid pace of information development in society, there are challenges for military justice, especially military courts, to be able to meet the demands of the community for openness of information in Military Courts without abandoning the basic principles of the military. This is what the Military Court is trying to do so that it can fulfill the sense of public trust, especially after being under the Supreme Court of the Republic of Indonesia.

The position and existence of military courts as a component of the judicial power in Indonesia is no longer in doubt because the 1945 Constitution as the Constitution of the Republic of Indonesia has guaranteed the existence of military courts in Article 24 paragraph (2) of the Fourth Amendment to the 1945 Constitution, as well as Law No. 48 of 2009 concerning Judicial Power. Article 18 also confirms that military courts are part of the judicial power, so there is no

doubt that military courts are one of the components and powers of the judicial power in Indonesia.

Historically, military justice is the same as other judicial institutions, namely having two roofs, which are administratively financial and personnel under the Ministry of Defense, while in terms of technical guidance under the Supreme Court. However, the two-roof system began to end with the issuance of Law No. 35 of 1999 concerning Amendments to Law No. 14 of 1970 concerning the Main Provisions of Judicial Power, where in article 11 which is the legal basis for the two-roof system is changed to: judicial bodies as referred to in Article 10 paragraph 1, organizationally, administratively and financially are under the authority of the Supreme Court.

The separation of the Police from the TNI (formerly ABRI) will have legal implications for Polri members who commit crimes, namely that they will no longer be tried in Military Courts, but in General Courts, as regulated in Article 7 paragraph (2) of MPR Decree No. VII/MPR/2000, namely that members

The Indonesian National Police are subject to the authority of the General Court and the Indonesian National Armed Forces are subject to the authority of the Military Court. The MPR Decree No. VII/MPR/2000 was followed up on January 8, 2002, with the enactment of Law Number 2 of 2002 concerning the Indonesian National Police in Article 20 paragraph (1) letter a, members of the Indonesian National Police are no longer TNI soldiers but are civil servants so that criminal violations committed by members of the Indonesian National Police become the jurisdiction of the General Court (Article 29 paragraph 1 of Law No.2/2002). Criminal acts committed by members.

Therefore, the criminal liability process in desertion cases involves military courts that have special jurisdiction to handle violations of the law by military members. In this case, military courts have the authority to impose sanctions that reflect the level of error and the impact caused by the act of desertion. This process aims to enforce the law while providing a deterrent effect for the perpetrators and preventing similar cases in the future.

However, in some cases, desertion can occur due to personal or external factors, such as psychological stress, family problems, or dissatisfaction with the work environment. Therefore, in imposing sanctions, military justice also considers the subjective conditions of the perpetrator. This approach shows that even though the military system is highly disciplined, the principle of justice remains the basis for imposing punishment.

Thus, criminal liability for TNI members who desert is not only aimed at enforcing the law, but also to maintain the honor and sustainability of the military institution. Through the application of appropriate and fair sanctions, it is hoped that the discipline and loyalty of TNI members can continue to be maintained, so that they can carry out their duties with full responsibility in maintaining the sovereignty of the state.

Problem Formulation

1. What sanctions are given to members who desert according to Decision No. 28- K/PMT-II/ AL/X/2020?

2. What are the Judge's considerations in deciding cases of criminal desertion for military members in accordance with Decision No. 28-K/PMT-II/AL/X/2020?

Research objectives

1. To find out the sanctions given to members who desert according to Decision No. 28- K/PMT-II/AL/X/2020
2. To find out the Judge's considerations in deciding cases of criminal desertion for military members in accordance with Decision No. 28-K/PMT-II/AL/X/2020

Benefits of Research

1. Theoretical Benefits

From a theoretical perspective, this research contributes to the development of military criminal law, particularly in the aspect of criminal responsibility for military members who commit the crime of desertion.

2. Practical Benefits

This research can be used as evaluation material to improve the supervision system, discipline development, and prevention efforts against desertion cases.

3. Self Benefits

The benefits of research for oneself in the process of completing a final assignment to obtain a Bachelor of Laws (SH) degree include developing legal knowledge, improving analytical and writing skills, and forming a disciplined and responsible character that will be useful in a professional career.

LITERATURE REVIEW

The Concept of Legal Responsibility in the Military

Legal responsibility in the military context is different from general criminal law. According to the Military Criminal Law Book by Atmasasmita, military law has a stricter system of responsibility because it relates to discipline, hierarchy, and compliance with rules in military institutions.

In the book Basics of Military Law by Nasution (2005), it is explained that legal responsibility in the military includes three main aspects:

Criminal Liability → Applies if a soldier commits a crime, such as desertion.

Disciplinary Responsibility → Concerning violations of internal regulations that do not amount to criminal acts.

Administrative Responsibility → In the form of administrative sanctions such as dismissal or transfer as a result of serious disciplinary violations.

Definition and Legal Basis for Desertion in the Military

Desertion is the absence of a military member from his duties without permission for a certain period of time. In Indonesian military law, desertion is regulated in Article 87 of the Military Criminal Code (KUHPM), which states

that: Military personnel who leave their duties without permission for more than 30 days during peacetime are subject to criminal penalties and dismissal. If desertion occurs during wartime, the sanctions are more severe, including the possibility of the death penalty.

According to the book *Military Justice in Indonesia* by Sudikno Mertokusumo, desertion is categorized as a serious violation because it can damage discipline and stability in a military organization.

Criminal Liability for Military Members Who Commit Desertion

In the military legal system, criminal liability for desertion involves military justice as an institution that has special jurisdiction in handling violations of the law by military members. Based on Article 143 of Law of the Republic of Indonesia No. 31 of 1997 concerning Military Justice, the legal process for military members who commit desertion can be carried out in absentia if the accused runs away and is not found within 6 consecutive months.

According to the Indonesian Military Criminal Code Book by Sri Soemantri, criminal responsibility for deserters is based on the following elements:

Intentional → The perpetrator knowingly leaves his duties without permission.

Duration of absence → If it is more than 30 days, then it falls into the category of criminal desertion.

Impact on units → Desertion can disrupt the operations and morale of other soldiers.

The case study in Decision No. 28-K/PMT-II/AL/X/2020, involving an Indonesian Navy officer who deserted for 121 days, shows that the punishment imposed includes: Principal penalty: Imprisonment for 1 year. Additional penalties: Dismissal from military service.

In the book *Military Justice System* by Hikmahanto Juwana, it is stated that sanctions against desertion must reflect three main functions in military law: Repressive – Giving strict punishment so that it is not repeated.

Preventive – Prevent other members from taking similar actions.

Corrective – Correcting behavior that is contrary to military values.

Disciplinary and Administrative Responsibilities in Cases of Desertion

In addition to criminal liability, military members who desert can also be subject to disciplinary and administrative sanctions. According to the *Military Discipline Management Book* by Hendro Wibowo, the forms of disciplinary liability in cases of desertion include:

a. A stern reprimand or warning.

b. Demotion or suspension.

Dismissal from military service as the highest administrative sanction.

In the *Military Discipline Law Book* by Joko Indarto, it is explained that disciplinary sanctions are given as a preventive measure before a violation enters the criminal realm. However, if the violation is repeated or has a major impact on the military institution, then administrative sanctions such as dismissal can be applied.

Factors Influencing Legal Responsibility in Desertion Cases

Several factors influencing legal responsibility in desertion cases, according to the Indonesian Military Law Book by A. Ridwan Halim, include:

Context and reasons for desertion → Did the perpetrator have a reason that could be considered, such as family problems or psychological pressure.

Duration of absence → The longer a soldier is absent, the more severe the sanctions received.

Impact on the unit → If desertion causes operational disruption, the punishment is more severe.

In some cases, military justice may consider a restorative approach, especially if the desertion was committed due to humanitarian reasons. The book *Sanctions in Military Law* by Joni Suryanto emphasizes that in certain cases, rehabilitation and reintegration into the service can be an alternative to outright dismissal.

Implications and Conclusions in the Literature

From this literature review, it can be concluded that the military's legal responsibility towards TNI members who desert is not only limited to criminal penalties, but also includes disciplinary and administrative sanctions.

According to the book *Theory and Practice of Military Criminal Law* by Zainal Arifin (2014), the application of sanctions in cases of desertion must take into account:

Legal aspects → Enforcing the Criminal Code regulations fairly and proportionally.

Disciplinary aspect → Ensuring that punishment has a deterrent effect.

Humanitarian aspect → Considering the factors behind desertion.

In the *Book of Military Justice Law* by Suharyono, it is explained that the main objective of law enforcement in desertion cases is to maintain discipline, loyalty, and the effectiveness of the TNI as the guardian of state sovereignty. Therefore, each case must be handled with the right approach according to the level of error and its impact on the military institution.

METHODOLOGY

Research Object

The object of this research aims to clarify the formulation of the problem to be discussed, so that the research can be directed and systematic. The focus of this research is on "Criminal Liability of TNI Military Members Who Commit the Crime of Desertion (Study of Decision No. 28- K / PMT-II / AL / X / 202)". This research focuses on the effectiveness of the Criminal Trial Process for Military Members Who Commit Desertion According to Decision No. 28- K / PMT-II / AL / X / 2020.

Research Data Sources

The data sources for this research were conducted by the author by conducting research in the form of Secondary Data:

That is, data obtained from library research. Secondary data is used as a library study consisting of:

1. Primary Legal Materials

Namely, legal materials that are binding and directly related to the problems being analyzed. These legal materials consist of regulatory materials related to "Criminal Liability of TNI Military Members Who Commit the Crime of Desertion (Study of Decision No. 28- K / PMT-II / AL / X / 2020"

These primary legal materials include:

- a. The laws (UU) regarding the military in Indonesia are Law Number 31 of 1997 concerning Military Justice and Law Number 25 of 2014 concerning Military Disciplinary Law.
 - b. Law Number 31 of 1997 concerning Military Justice was enacted in Jakarta on 15 October 1997.
 - c. Law Number 25 of 2014 concerning Military Disciplinary Law came into effect on October 14, 2014. This law revokes Law Number 26 of 1997 concerning Disciplinary Law for Soldiers of the Armed Forces of the Republic of Indonesia.
2. Secondary Legal Materials
- Secondary legal materials refer to legal sources that provide explanations, interpretations, or views on primary legal materials. In this study, several secondary legal sources were obtained, including:
- a) Book
 - b) Law Journal
 - c) Articles from the Internet
3. Tertiary Legal Materials

Tertiary Legal Materials are legal materials that are used as a complement and also function to provide information about primary and secondary legal materials that are not directly related to the existing problem, but are very much needed to support the completeness and clarity of the primary legal materials and secondary legal materials, for example the Big Indonesian Dictionary (KKBI).

Data collection

Based on the type and source of data used by the author in the analysis of this study, the data collection technique applied is the normative qualitative research method. This study focuses on literature review, using various sources such as laws, books, journals, theses, and laws and regulations that are relevant to the formulation of the research problem. With this approach, the author seeks to obtain systematic results regarding criminal acts of connectivity.

Data Analysis

The data analysis used is normative juridical, which is a library legal research. This research method is carried out by reviewing library materials or secondary data as a basis for research, through tracing regulations relevant to the problems discussed. The approach taken focuses on the main legal materials, by analyzing theories, concepts, legal principles, and laws and regulations related to the topic of this research.

RESEARCH RESULT AND DISCUSSION

Sanctions given to military members who desert according to the decision NO 28-K/PMT-II/AL/X/2020

Desertion is a serious violation of military law that can disrupt the discipline and combat readiness of a unit. In various military law literature, including the book *Military Criminal Law* by Atmasasmita and *Basics of Military Law* by Nasution (2005), it is explained that the absence without permission of a soldier for a certain period of time can be categorized as desertion.

1. Definition and Legal Basis for Desertion

According to the *Military Criminal Law Book* by Atmasasmita, desertion is defined as the act of a soldier leaving his duties without permission for a certain period of time, either in peacetime or wartime. Based on Article 87 paragraph (1) ke-2 jo paragraph (2) of the Criminal Code, a military member who is absent without permission for more than 30 days in peacetime can be subject to criminal penalties and dismissal.

The book *Military Justice in Indonesia* by Sudikno Mertokusumo explains that the reason for imposing heavy sanctions on deserters is because such actions can endanger state security, especially if carried out in conditions of war or military operations.

2. Analysis of Decision No. 28-K/PMT-II/AL/X/2020 in the Perspective of Military Law Books

In this verdict, Major Laut (KH) Libra Yansen Manalu, SH, MP was proven to have deserted during peacetime for 121 days. In accordance with the principles in the book *Basics of Military Law* by Nasution (2005), this action not only violates the law but also disrupts the internal stability of the military unit. Based on a study in the book *Military Justice System* by Hikmahanto Juwana, the sanctions given to deserters must be:

Repressive – Giving punishment so that it is not repeated.

Preventive – Provides a deterrent effect for other military members.

Corrective – Correcting behavior that is inconsistent with the values of military discipline.

The decision of the Jakarta II High Military Court which sentenced him to 1 year in prison and dismissal is in line with this principle because:

Demonstrate the firmness of military law in dealing with disciplinary violations.

Avoiding negative impact on the morale of other soldiers.

Reflects the suitability between the action and the punishment given (principle of justice).

The criminal acts committed by the defendant are based on:

- a. Article 87 paragraph (1) 2nd in conjunction with paragraph (2) KUHPM
This article stipulates that a military person who is intentionally absent without permission for more than 30 consecutive days in peacetime can be punished.
- b. Article 143 of Law of the Republic of Indonesia No. 31 of 1997 concerning Military Justice. Regulates that desertion cases can be examined in

absentia (without the presence of the accused) if the accused runs away and is not found for 6 consecutive months.

- c. Article 2 paragraph (4) of Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial Power States that trials must be conducted simply, quickly and at low cost. Circular Letter of the Head of the Main Military Court No. SE/03/II/2016 Organize the resolution of cases in absentia for desertion.

3. Legal Facts

The defendant has not been on duty since September 9, 2019 without valid permission. The unit has made various summons and search efforts but the accused was not found. Based on the Minutes of Information from the Lantamal III Military Police on January 7, 2020, the defendant's whereabouts remained unknown for more than 121 consecutive days. The country was at peace and the defendant's unit was not on military operations. Therefore, the elements of a criminal act in Article 87 of the Criminal Code are fulfilled.

2. Sanctions Imposed

Based on legal facts and statutory provisions, the Jakarta High Military Court II sentenced the defendant to the following:

Principal penalty: Imprisonment for 1 (one) year.

Additional Criminal Penalty: Dismissal from Indonesian Navy military service.

The court fee is Rp. 25,000.

Judge's Considerations in Deciding on Criminal Cases of Desertion for Military Members in Accordance with Decision No. 28-K/PMT/II/AL/X/2020

The crime of desertion in the military environment is a serious violation that can disrupt the discipline, hierarchy, and combat readiness of a unit. Military law books and statutory provisions provide a strong basis for the courts in trying desertion cases, as reflected in the Decision of the Jakarta High Military Court II Number 28-K/PMT-II/AL/X/2020.

In the book Military Criminal Law by Bambang Waluyo, it is explained that desertion is the absence of a soldier without valid permission from his unit within a certain time that has been determined by law. This concept is in line with Article 87 paragraph (1) ke-2 jo paragraph (2) of the Criminal Code, which is the basis for criminalization in this decision.

Desertion in the Perspective of Military Law

According to the book Indonesian Military Law by A. Ridwan Halim, military criminal law has stricter characteristics than general criminal law, because it is related to discipline and obedience as the main principles in military organizations.

Based on this decision, there are five main elements in the crime of desertion which are in line with the theory in the book Basics of Military Law by Huala Adolf, namely:

Element One: "Military"

The book *Military Disciplinary Law* by Joko Indarto explains that a person is considered a military person if he has bound himself to service and is subject to military regulations. In this case, the defendant was a Navy Major (KH) in the Indonesian Navy, so he was subject to the Criminal Code. The defendant is an active soldier of the Indonesian Navy with the rank of Navy Major (KH).

Based on Article 46 of the Criminal Code, a military person is someone who is bound to serve voluntarily and is required to serve continuously.

Second Element: "Intentionally"

According to Sudarto in his book *Criminal Law I*, intention means there is a will and knowledge of the act committed. In this case, the defendant left the service without permission for 121 days, thus showing an element of intention. Intention in criminal law means there is intention and awareness in carrying out an act.

The defendant left the service without permission since September 9, 2019 without valid reason and without contacting the unit.

Third Element: "Absence Without Permission"

In the book *Code of Ethics and Military Law* by Suharyono, absence without permission is defined as an action that can hinder unit operations and reflects a serious violation of discipline. Evidence of absence in this decision strengthens this element.

The defendant's absence was proven based on the unit's attendance and a search warrant from the Head of Diskumal. The absence of official permission from superiors confirms that this act is an unlawful act.

The Fourth Element: "In Time of Peace"

At the time of the incident, Indonesia was not in a state of war, and the accused's unit was not being prepared for military operations.

The book *Law of War and Military Operations* by M. Said Karim explains that military courts distinguish between desertion in peacetime and wartime, where the criminal threat is heavier in wartime. In this decision, the country is in a state of peace, so the defendant is charged with Article 87 of the Criminal Code.

Fifth Element: "Longer Than Thirty Days"

According to the book *Indonesian Military Criminal Law* by Sri Soemantri, desertion during peacetime is categorized if the absence is more than 30 consecutive days. In this case, the defendant was absent for 121 days, thus fulfilling this element.

The defendant was absent for 121 consecutive days from September 9, 2019 to January 7, 2020, exceeding the 30-day limit stipulated in the Criminal Code.

Judge's Consideration in Literature Perspective

The Panel of Judges considered the principles of legal certainty, justice, and utility, as explained in the book *Theory and Practice of Military Criminal Law* by Zainal Arifin (2014). This decision was based on:

Sustainability Aspects of Military Organizations

In the book *Military Discipline Management* by Hendro Wibowo, it is explained that the presence of soldiers in a unit is very important to maintain combat readiness. Desertion can weaken the combat readiness of the unit and potentially lower the morale of other soldiers.

Educational and Preventive Aspects

The book *Sanctions in Military Law* by Joni Suryanto emphasizes that punishment in cases of desertion is not only intended as retaliation, but also as a deterrent for other soldiers so that they do not commit similar violations. *Aspects of Military Discipline Enforcement*¹

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

This decision reflects the enforcement of law, justice, and order in the military environment, and provides a deterrent effect for other soldiers so that they do not commit similar violations. Sentencing him to prison and dismissal from military service, the court stressed that discipline and loyalty are core values in the military institution that must not be violated.

In addition, this decision also shows that the military court acts firmly in enforcing the law regardless of rank or position, thus creating a sense of justice and legal certainty within the TNI. With this decision, it is hoped that there will be no more soldiers who ignore their duties and responsibilities, and further strengthen the discipline and combat readiness of military units for the sake of national defense.

Recommendation

For military members who desert for understandable reasons (e.g., health or family issues), a restorative approach may be considered. Reintegration or rehabilitation programs can help them return to military life without feeling isolated or unduly punished.

To prevent future desertion, there needs to be a periodic evaluation of existing policies and their outcomes. This includes assessing whether the preventive measures taken have been effective in reducing the number of desertions or not. Although this study has comprehensively examined the military's legal responsibility towards TNI members who desert, there are several limitations that need to be noted: **Limited Empirical Data** - This article uses a more normative approach with analysis based on legal regulations, without direct data from real cases in the field.

ADVANCED RESEARCH

In order for the study to be more comprehensive, further research is recommended to: Using empirical data from real cases that have been tried in military courts. Involves interviews with military law practitioners. Comparing the Indonesian military legal system with other countries. Analyzing the social and psychological factors that contribute to desertion in the military.

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