

Application of Military Law Against TNI Members Who Commit Desertion Crimes

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Abstract

This study aims to: 1) To analyze the application of military criminal law against members of the TNI perpetrators of desertion crimes; 2) To analyze the constraints in the enforcement of military criminal law against members of the TNI perpetrators of desertion crimes. This study uses normative-empirical legal research, while the data analysis used is qualitative approach to primary data and secondary data. where in analyzing / processing data first held organizing of primary data obtained through related legislation and literature. Then the collected data is then discussed, compiled, elaborated, and interpreted, and reviewed the problem so that a conclusion is obtained as a problem solving effort. The results showed that the application of military criminal law against members of the TNI who were proven to commit desertion crimes is the authority of the military judiciary to prosecute him, then the stages in the form of investigations conducted by the Military Police on the orders of the Superior Who Has the Right to Punish (Ankum). furthermore, the investigation file is given to the Military Oditur to be studied, then the military oditur makes an indictment to be delegated to the Military Judiciary, after the judiciary feels sufficient with the files of the Military Oditur, then the military judiciary will prosecute members of the military who are accused of desertion. Furthermore, constraints in law enforcement related to desertion crimes are reviewed from 4 interrelated aspects, namely with regard to legal substansi, the legal structure itself, facilities or infrastructure, and the community. The settlement of cases in the military judiciary at this time has been well arranged, but it is expected that all who play a role in the process of resolving military cases do all these stages based on Justice and Positive Law. The application of existing regulations must be done consistently and always conducted a review of desertion cases so that from these obstacles can be found solutions and solutions to reduce the quantity of desertion crimes.

Keywords: Military Law, Crime, Desertion, Law Enforcement

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1. Introduction

The state is seriously obliged to provide protection to all its citizens. (S. Salam, 2018) In the settlement of criminal acts within the Indonesian National Army (TNI) there is a need for regulations to achieve the cohesiveness of the way of action between officials authorized in the settlement of criminal cases in the TNI environment (Amrullah, 2019).

Therefore, a Decree of KASAD Number: SKEP/239/VII/1996 concerning Guidelines for Settlement of Criminal Cases in the TNI AD, as a description of Skep Pangab Number: Skep/71 I/X/1989 concerning the settlement of criminal cases in the ABRI environment. In the event of a criminal act committed by members of the TNI, the

Military Police shall conduct an investigation in accordance with the procedures and procedures stipulated in the Criminal Procedure Law (KUHAP) and Law No. 31 of 1997.

Article 69 of Law Number 31 of 1997: "The right of investigators to; 1. The Ansum (Against his men (Ansum) 2. Military police (POM) 3. Military prosecutors in the Military Judiciary (Oditur Military)". Thus the Military Police is one of the backbones that enforce legal norms within the TNI. In accordance with the function of the Military Police which is a technical function, directly determine the success in the construction of the TNI and the implementation of Hankam operations. In addition, to increase awareness of the law, discipline and discipline that is the main requirement in the life of soldiers reflected in the attitude of behavior, actions and devotion, strict and continued supervision is required by the Military Police (Syailendra, 2019).

An organization that is based on rules and includes 'military' frills has long been seen as a closed organization by most of the public. This view, does not close the possibility of directed to the military judiciary that has been viewed by the public as a closed judiciary, thus raising negative prejudices from the general public that all activities of the implementation of the law against innocent soldiers are not carried out fairly and legal practitioners judge the verdict of the military court in imposing punishment for soldiers who are guilty of criminal acts is relatively light.

In terms of law, members of the military have the same position as ordinary members of society, meaning that as citizens for him also applies all the rules of law that apply, both criminal law, civil law, criminal events and civil events. The difference is that more special regulations are still needed that are tougher and heavier for members of the military, it is because there are some actions that can only be done by the army alone are native to the military and do not apply to the public, for example: refusing service orders, against the orders of superiors (insubordination), and desertion (S. Salam et al., 2021).

The criminal acts mentioned above reflect the nature of the a military that ignores the ethics and rules of disciplinary law that apply within the TNI. An absolute requirement in military life to comply with tni regulations and as well as the orders of every superior in order to establish life in the military full of high awareness. If these things are violated show bad military and irresponsible in enforcing Sapta Marga and Oath of Soldiers and if maintained will only shake the joints of disciplinary life and order in the TNI environment (Amrullah, 2019).

Some acts of such a heavy nature, if carried out by members of the military in certain areas the threat of punishment from the general criminal law is considered too light, because the military is the parent of a small percentage of members of the public who have had other provisions in the Judiciary itself, namely the military judiciary or military judiciary.

As information development in the community rapidly progressed, there were challenges to the military judiciary, especially military courts, to be able to meet the demands of the public for information disclosure in the Military Court without stripping off basic military principles. This is what the Military Court is trying to fulfill the sense of public trust, especially after being under the Supreme Court of the Republic of Indonesia. The position and existence of the military judiciary as a component of judicial power in Indonesia is no doubt because the 1945 Constitution as the constitution of the Republic of Indonesia has guaranteed the existence of the military judiciary in Article 24 paragraph (2) of the 1945 Constitution fourth amendment, as well as Law No. 48 of 2009 on the power of the judiciary in Article 18 has also asserted about the military judiciary

as part of the judicial power, so there is no doubt that the military judiciary is one of the components and forces in judicial power in Indonesia.

The meaning of the philosophy of the establishment of a military judiciary is nothing but to crack down on members of the TNI who commit crimes, becoming one of the control tools for TNI members in carrying out their duties, so as to form and build a strong, professional and law-abiding TNI because the task of the TNI is very large to escort and save the nation and the country (S. Salam, 2018).

The history of military justice is the same as that of other judicial institutions which have two roofs, which are administratively financial and staffing under the Ministry of Defense, while technically under the Supreme Court. However, the two-stop system began to end with the issuance of Law No.35 of 1999 on amendments to Law No.14 of 1970 concerning the basic provisions of the Power of Justice, wherein in Article 11 which became the legal basis of the two-roof system was changed to: the judicial bodies as referred to in Article 10 Paragraph 1, organizationally, administratively and financially under the power of the Supreme Court.

Law No. 35 of 1999 makes judicial institutions under the Supreme Court both institutionally and administratively (except religious justices that were still in the Ministry of Religion at the time). This change is driven by the spirit of realizing independent judicial power, free from the interference of other powers. And since August 2004 all judicial bodies have been under one roof under the rule of the Supreme Court. Affirmation of *one roof system* policy since the amendment of Law No. 14 of 1970 amended by Law No. 35 of 1999, then amended again with Law No. 4 of 2004 and finally after the enactment of Law No. 48 of 2009 on The Power of Justice (hereinafter referred to as the Law on The Power of Justice), does not change any provisions on the one-stop system in judicial power as stated in Article 21 of the Law on Judicial Power still governs the administration, and financial.

The Supreme Court and the judiciary under it in this case the general judiciary, with several special courts under it, religious justice, military judiciary and tun judiciary are under the control of the Supreme Court. Thus, Military Justice is one of the (sub-systems) of the State Judiciary (Indonesian Justice system) which is determined by the Law and has an equal position and level with other judicial environments.

The Indonesian National Army which is hereinafter abbreviated as (TNI) is a tool of the state in charge of maintaining, protecting, and maintaining the integrity and sovereignty of the State. Every State needs a strong and professional armed force to protect territorial integrity, uphold sovereignty, protect its citizens and become the glue of national unity. The era of independence of tni and polri was structured in the institution of the Armed Forces of the Republic of Indonesia (hereinafter referred to as ABRI) for about 40 years.

The separation of the National Police from the TNI (formerly ABRI) will bring legal implications for members of the National Police who commit criminal acts that are no longer tried in the Military Judiciary, but the General Judiciary, as stipulated in Article 7 paragraph (2) Tap MPR No.VII /MPR/2000, namely that members of the National Police are subject to the power of the General Judiciary and the TNI is subject to the power of Military Justice. The decree of MPR No. VII/MPR/2000 was followed up on January 8, 2002, with the enactment of Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia in Article 20 paragraph (1) letter a, members of the National Police are no longer TNI Soldiers but as Civil Servants so that criminal offenses

committed by members of the National Police become the jurisdiction of the General Judiciary (Article 29 paragraph 1 of Law No.2/2002).

Crimes committed by members of the National Police after January 8, 2002 are no longer tried by the Military Judiciary throughout Indonesia, because the Military Oditur did not submit / proceed with the case to the Military Court, but returned the case file to the Military Police investigators to be subsequently returned to the Provos Polri. Military Justice is authorized by the Law as a special judiciary that examines and prosecutes crimes committed by groups of people organized in the TNI, which is specifically formed to carry out the duties of the State in the field of organizing the Defense of the State that is subdued and enforced Military Law.

The aspect of the enactment of Military Law for TNI soldiers is what positions the Military Judiciary as a special judiciary in the system of organizing the State judiciary alongside the other three judiciaries. Therefore, the Military Judiciary in the act of examining and adjudicating does not culminate and is supervised by the Mabes TNI / Dephankam but culminates in the Supreme Court. In the case of proceedings in the Military Judiciary is regulated with special provisions namely the Law of Military Justice Events as stipulated in Law No. 31 of 1997 on Military Justice (hereinafter abbreviated to the Military Justice Law). Therefore, every member of the TNI is required to be steadfast in carrying out his/her service obligations under any circumstances, upholding the attitude of the soldier and having a sense of discipline and high personality that is expected to be a role model for the surrounding community, in order to get a place in the hearts of the community. In military life, discipline must be confident, obedient and obedient by clinging to the joints that have been stated to every TNI soldier in the *sapta marga* and the oath of the soldier that reads:

Sapta Marga :

- a) We are Citizens of the Unitary State of the Republic of Indonesia who are united in Pancasila.
- b) We Patriot Indonesia, supporters and defenders of the ideology of the State are responsible and do not know to give up.
- c) We are Knights of Indonesia, who fear God Almighty, and defend honesty, truth and justice.
- d) We are Soldiers of the Indonesian National Army, are Bhayangkari State and Nation of Indonesia.
- e) We are Soldiers of the Indonesian National Army, uphold discipline, obey and obey the Leadership and uphold the attitude and honor of soldiers.
- f) We soldiers of the Indonesian National Army, prioritize the entrepreneurship in carrying out the task, and always ready to be devoted to the State and Nation.
- g) We are Soldiers of the Indonesian National Army, loyal and occupy the oath and oath of soldiers.

Oath Of Soldiers

By Allah I swear by Allah:

- 1) That I will be loyal to the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution
- 2) That I will submit to the law and uphold the discipline of the soldier.

- 3) That I will obey the superior by not disputing orders or verdicts.
- 4) That I will carry out all obligations with full sense of responsibility to the Army and the State of the Republic of Indonesia.
- 5) That I will hold all the secrets of the Army as hard as I can.

A member of the TNI is required to clean the "white paper" of a despicable personal act in the eyes of members of the military itself as well as mainly among the public. Actions / actions under any pretext or form carried out by members of the TNI either individually or in groups that violate the provisions of the law, other norms that apply in life or contrary to the rules of the ministry, discipline, discipline in the TNI in essence is an act / action that undermines the authority, dignity and good name of the TNI which if such actions or actions are allowed to continue, can cause unification in the community and hinder the implementation of development and coaching TNI.

Each member of the TNI must comply and comply with the provisions of the law applicable to the military, namely the Military Criminal Law (hereinafter referred to as kuhpm), the Military Disciplinary Law (KUHDM), the Military Disciplinary Regulation (PDM) and other regulations. This military law is applied to all TNI soldiers, both Tamtama, Bintara, and Officers who commit an act that harms the unity, the general public and the country that is inseparable from other regulations that apply also to the general public.

One of the most common crimes committed in the TNI environment is the crime of desertion, where the TNI soldier conducting the act of withdrawing himself from the implementation of his official obligations. In prosecuting perpetrators of desertion crimes before being handed over to the Court, military oditur or military prosecutors are authorized to act as public prosecutors who have the duty and authority to prosecute in criminal cases. Oditur who was appointed in prosecuting members of the TNI after receiving the case file from the investigators (Military Police) first conducted an examination of the completeness of the contents of the case file after the case file is declared complete then the Military Oditur will process the case file by making a Bapat (News Of Opinion Event) containing the testimony of witnesses, description of the suspect and evidence and conclusions from Oditur about the crimes that occurred and the article alleged k emudian Head of Military Oditurat made SPH (Legal Opinion Advice) addressed to Papera (Officer of The Case) which states that the accused has committed a criminal offence. Furthermore Bapat and SPH are sent to Papera with attached Skeppera (Decision Letter of Submission of Cases) to be asked for signature to Papera. After receiving the Military Oditur Skeppera made an indictment, then delegated the case to the Military Court and based on the plan of the trial of the Military Court, Oditur made a summons to the accused and witnesses containing about the day, date, time, case of trial, and after the case was decided the defendant was found guilty and the case was already in legal force still oditur immediately carry out execution to the accused to carry out the criminal.

The increase in desertion crimes committed by the military, indirectly has illustrated the deterioration in the level of discipline of soldiers and the enforcement of the discipline of soldiers. Meanwhile, it is a guideline for every TNI soldier that discipline is the pole, backbone and breath in military life. If the level of discipline is no longer there, it will affect the construction of the unit that will eventually occur many violations do not enter the service without permission so that the abandonment of the tasks charged to each Soldier who can reduce his preparedness in the unit where the act of not entering

the service can damage the image of the TNI in the community that has been famous for discipline and high loyalty both in the unity and out of the force.

2. Method

2.1. Research Type

The type of research used is normative-empirical legal research. In the sense of this research is expected to be able to explain or describe to obtain a systematic, detailed, complete and comprehensive picture of "Application of Military Criminal Law Against Members of TNI Perpetrators of Desertion Crimes".

2.2 Types of Legal Materials

A. Primary Legal Materials

Primary Legal Material is a law that is binding in the form of prevailing laws and regulations and has to do with the issues discussed consisting of: The Book of Military Criminal Law (KUHPM); Military Disciplinary Law (KUHDM); Penal Code; Criminal Procedural Code (KUHAP); Law No. 31 of 1997 on Military Justice; Law No. 26 of 1997 on The Discipline Law of ABRI Soldiers. and other rules relevant to this study.

B. Secondary Legal Materials

Secondary law is a legal material that provides an explanation of primary legal materials, including legal materials obtained from books, literature, scientific works to broaden the author's insight into the field of writing.

2.3 Legal Material Collection Methods

The type of research used is normative-empirical legal research. In the sense of this research is expected to be able to explain or describe to obtain a systematic, detailed, complete and comprehensive picture of "Application of Military Criminal Law Against Members of the TNI Perpetrators of Desertion Crimes". In this case the discussion of the analysis on the scope of desertion is intended to be able to obtain a discussion on the subject matter that is in the Military Court regarding desertion

The type of research used is normative juridical research that is research that rests on the legal norms contained in the laws and regulations and court rulings and norms that exist in society. (H. Z. Ali, 2009)

2.4 Legal Material Analysis

Based on normative-empirical research type, the data analysis used is qualitative approach to primary data and secondary data. where in analyzing / processing data first held organizing of primary data obtained through related legislation and literature. Then the collected data is then discussed, compiled, elaborated, and interpreted, and reviewed the problem so that a conclusion is obtained as a problem solving effort.

3. Result

3.1 Application of Military Criminal Law Against MEMBERS of the TNI Perpetrators of Desertion Crimes

In this subsection there are 2 (two) issues that will be outlined related to the Application of Criminal Law Militer Terhadap Amemberof the TNI Pelaku Tindak Pidana Desersi. *First*, The Criminal Law materil. *Second*, Formil Criminal Law.

A. Criminal Law Materil

Criminal acts or criminal acts (*strafbaarfeit*) is an act that by a rule of law is prohibited and threatened criminally. (Moeljatno, 2002) According to Pompe that Straafbaar Feit's words could theoretically be formulated as: A violation of norms (interference with the rule of law) that has deliberately or unintentionally been committed by an offender, where the punishment of the perpetrator is necessary for the preservation of the rule of law and the guarantee of public interest. (Andi Sofyan, 2016)

Legal Arrangements Terhadap Criminal Settlement Process Desertion. Desertion is an act committed by TNI soldiers. Desertion is also a pure crime, where a pure military crime is a criminal offence committed only by a military person, because of its special military nature. Military criminal law is called specifically with the understanding to distinguish with the general criminal procedural law that applies to everyone.

Military criminal law also contains rules that deviate from the provisions that have been stipulated in the general criminal procedural law and only apply to special groups (military) or people because the laws and regulations are directed at him. (M. F. Salam, 2004)

Furthermore, Tindak Pidana Pesersi senself is stipulated in the Book of Law - Undang Military Criminal Law contained in Article 87 and Article 89 kuhpm, following excerpts from the article:

Article 87

1) Threatened By Desertion, Military:

"The 1st who leaves with the intention of withdrawing forever 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,

The 2nd Who by his fault or deliberately committed an unauthorized absence in peacetime more than thirty days, in a wartime longer than four days,

The 3rd Who deliberately performed an unauthorized absence and for not participating in the partial or complete implementation of an ordered journey, as described in Article 85 2" .

2) Desertion, carried out in peacetime, is threatened with a maximum prison sentence of two years and eight months.

3) Desertion committed in wartime, threatened with a maximum prison sentence of eight years and sixmonths"imprisonment.

Article 89

"Threatened with the death penalty, life imprisonment or a maximum of twenty years; The 1st Desertion to the enemy & the 2nd (amended by Law No. 39 of 1947) desertion in wartime, from units of troops, sea boats or aircraft assigned to the security services, or from a place or post that is attacked or threatened by attack by the enemy. "

The crime of desertion has the main characteristic of unlicensed absence by a military officer at a designated place for him, where the military is supposed to be in the unity to carry out service obligations.

Article 6 of the Criminal Code is: "Principal criminal: Imprisonment, this is stipulated in Article 6a paragraph (2) of the Criminal Code whose execution of

punishment for the military is carried out in the Military Correctional Institution (Masmil)".

Additional criminal charges: "Dismissal from military service, this is stipulated in Article 6b paragraph (1) kuhpm. Criminal prosecution of dismissal in addition to the principal criminal viewed by military judges is no longer feasible to be maintained in the life of the military community and if not convicted of dismissal it is feared that the presence of the convicted later in the military after he served his sentence, will shake joint-sendi order in the community"

In the explanation of Article 143 Undang-Undang Nomor 31 Year 1997 formulates that what is meant by the examination without the presence of Terdakwa in the sense of In Absensia is an examination carried out so that the matter can be resolved quickly for the sake of the establishment of discipline of soldiers in order to maintain the integrity of the troops, including in this case the abundance of cases whose defendants have never been examined because from the beginning the Defendant fled and was not found again in, a period of 6 (six) months in a row, for his validity must be strengthened by a certificate from the Commander or Head of his Unit. The calculation of grace period of 6 (six) consecutive months from the date of the filing to the Court. Subtansi formulation of Article 143 provides requirements for desertion trials in Absentia, namely:

- a. The deadline for the docket is 6 (six) months calculated the date of delegation to the Court.
- b. Has been summoned to face the court 3 (three) times.
- c. Can be carried out against desertion cases whose investigations are conducted in Absensia.

Thus, when observed, the requirements formulated in Article 143, are limitative and imperative, sothat the court only carries out the one ordered by theLaw. It turns out that in practice there are several important things to be reviewed, especially grace periods in the criminal proceedings desertion, especially for defendants who are not found or unknown existence. especially faced on the demands of the unit that wants to accelerate the settlement in order to quickly get legal certainty with the consideration that in real terms the soldier is no longer in the unit based on The Verdict No. 35-K / PM III-16 / AD/IV/2019 , whereas in Article 35143 Law No. 31 of 1997 explains bahwa to be able to bring forward the case of desertion in Absensia must be obeyed and obeyed the requirements outlined in Article 143 above. The provisions of the six-month deadline apply to desertion cases whose investigations are conducted on an In Absensia basis. Thus, the examination of desertion cases in Absensia conducted is not in accordance withthe provisions, apapun alasan and its considerations, it is not allowed because it is contrary to the formal requirements formulated in the Law.

B. Formil Criminal Law

After being elaborated on material criminal law, it is also important to elaborate on formil criminal law. Enforcement of criminal law formil against perpetrators of desertion crimes is stipulated in Law No. 31 of 1997 on Military Justice.

In line with the results of the author's interview with Major Sus Rahmansyah Faharuddin, S.H., M.H. as a Military Judge in Military Pengadilan III-16Makassar: "The reason for the continuation of an examination of thecase of Desertion is to give a verdict that has a permanent legal force against the case that will have legal certainty".

The following is the process of resolving desertion crimes in the Military Court as follows:

1. Investigation stage
2. Submission stage of the case
3. Examination stage of the hearing at the Military Court.

The process of examining desertion cases is generally the same as the process of examining other criminal cases. At the first hearing, it was opened by the presiding judge followed by a hammer knock 3 (three) times. The process of examining desertion cases in the trial, Oditur Militer must first make a summons against the accused 3 (three) times inarow sec ara valid to be present in the trial to hear the indictment when the accused is not present or not found in the event of the existence of the first and second trial can not be declared as a desertion case trial in absentia. The trial of the desertion case can be declared in absentia, if at the time of the third summons, the accused remains absent from the proceedings. Therefore, the presiding judge stated that the trial was conducted in absentia followed by a hammer knock 1 (one) time.

Furthermore, the examination of witnesses must be attended and listened to by the accused, because the defendant has the right to deny the testimony of the witness, and if the defendant remains not found then the examination is still carried out.

The trial of desertion cases in Absentia is stipulated in the provisions of Undang-Undang RI No. 31 of 1997, formulated in several Articles, namely:

- a. Article 141 paragraph (10) of Law no. 31 of 1997: "The provision confirms that: In cases of desertion for which the accused was not found, the examination was carried out without the presence of the accused".
- b. Article 143 of Law No. 31 of 1997: "The criminal offence of desertion as referred to in the Military Criminal Code, whose defendant fled and was not found again within 6 (six) consecutive months and has been attempted to summon 3 (three) times in a row legally, but did not attend the trial for no reason, can be examined and decided without the presence of the accused".

The case of desertion examined in Absentia has been decided then the decision of the Military Court will be announced to all TNI soldiers, The Head of Service / Department in the jurisdiction of the Military Court that the name of the accused as in the letter attached to the announcement the case has been examined, tried and decided by the Court. Then Article 220 paragraph (4) of Law No. 31 of 1997 within 7 (seven) days after the verdict was announced did not come before the Clerk of the Military Court without appeal, then the defendant is considered to accept the decision of the Military Court.

The right of the accused or his Legal Advisor may file a legal action in the form of an appeal. Then at the time of the announcement of the decision clerk made the News Event Penempelan Announcement. According to the research conducted by the author that the perpetrators of desertion crimes, generally sentenced to the principal crime of prison plus the criminal dismissal of the TNI service. This is because in addition to the existing laws and regulations are also added to the rules that apply specifically in TNI institutions, which is indeed a crime of desertion is seen as a military crime that greatly impacts the life of the nation in general and the TNI Institution in particular (The results of the interview on August 06, 2020 with the Judge of the Military Court III-16 Makassar as a military judge , Major Sus Rahmansyah Faharuddin SH. MH).

According to Law No. 31 of 1997 concerning Military Justice Article 182 paragraph (5) then after the examination is declared closed, the judge conducts deliberations in a closed and confidential manner. The implementation of deliberations is based on the indictment and everything proven in the examination of the next trial is carried out the stage of implementation of the verdict, in the event that the implementation of the verdict is stipulated in:

Article 6 of the Criminal Code is:

- 1) Principal criminal: "Imprisonment, this is stipulated in Article 6a paragraph (2) of the Criminal Code whose execution of punishment for the military is carried out in the Military Correctional Institution (Masmil)".
- 2) Additional criminal charges: "Dismissal from military service, this is stipulated in Article 6 b paragraph (1) of the Criminal Code. Criminal prosecution in addition to the principal criminal view of military judges is no longer feasible to be maintained in the life of the military community and if not convicted of dismissal it is feared that the presence of the convicted later in the military after he served his sentence, will shake the joints of order in the community".

The basis of the Panel of Judges to impose additional criminal dismissals is contained in Article 26 of the Criminal Code which reads:

Article 26 paragraph (1) confirms: "Dismissal from military service, can be handed down by a judge along with any sentence of imprisonment to a military officer who based on the crimes committed is deemed unfit to remain in military life. "

Article 26 paragraph (2) confirms: "The dismissal, according to the judge, resulted in the loss of all rights he obtained from the Armed Forces during his prior service, with the exception that pension rights would only be lost in the event mentioned in the pension rules applicable to the convicted".

Article 26 paragraph (3) confirms: "If the dismissal coincides with the revocation of the right to enter the armed forces, according to the law also results in the loss of the right to own and wear the stars, the mark of honor medals or signs of recognition, as long as both are mentioned last in his obtained in relation to his previous service".

3.2 Constraints In The Enforcement Of Military Criminal Law Against Perpetrators Of Desertion Crimes

The process of examining desertion cases in a regular or in absentia in a military court can run better or otherwise the process of examination or trial process will encounter some obstacles. Based on the results of the author's research conducted in the Court of Military III-16 Makassar obtained obstacles in the settlement of desertion cases as follows (Interview Result by Faharuddin, August 2020) :

A. Legal Substance

The Court of Desertion Case In Absentia this Provision in Law-Undang No. 31 of 1997, formulated in several articles, namely:

Article 124 paragraph (4) of Law No. 31 of 1997. The provision confirms that: "In the event that a case file of a suspect is not found, the news of the Suspect's examination is not a requirement of the completeness of a case file".

The substance of the formulation of article 124 paragraph (4) is:

- 1) That the suspect's examination is not a formal requirement

- 2) The filing of desertion cases reported by the Unit to investigators can be done even if the Suspect does not exist.

Thus from the substance, it can be concluded that the investigation of this desertion crime is conducted without the presence of a suspect, hence the investigation of desertion cases in absentia.

Article 141 paragraph (10) of Law Number. 31 in 1997.

The provision confirms that "In the case of desertion, the Defendant is not found to have been examined without the presence of the Accused". When we look at the formulation of the article, it can be understood that the formulation is imperative, meaning an order that can not be interpreted otherwise so that the court adjudicates the case of desertion in absentia. From the formulation of Porigin 141 there are two substantial main things that the Defendant was not found, and the trial was conducted in absentia.

When you look at the formulation of the words "The defendant...." then it can be understood that for the file the defendant does not exist when the case will be tried, then the trial is carried out in absentia. In contrast to the formulation of Article 124 paragraph (4), which asserts "In the case of desertion case files whose suspects are not found, the news of the suspect's examination event is not a requirement for the completeness of a case file". So against the suspect who was not found then the investigation was conducted in absentia.

The problem is, what if the Defendant is present at the trial whether the examination of the case can be continued with a regular desertion examination (not in absentia) or should be stopped?. If observed both in the Criminal Code and in Law No. 31 of 1997 on Military Justice does not contain clear provisions, if the accused is present at the time of desertion cases in absentia sementara in court proceedings .

Article 143 of Law Number 31 of 1997

The ncertainties confirm that: "The criminal offence of desertion as referred to in the Book of Military Criminal Law, whose Defendant fled and was not found again within six consecutive months and has been pursued 3 (three) times in a row legally, but did not attend the trial without a reason, can be examined and decided without the presence of the Accused".

Explanation of Article 143 The provision of the explanation formulates that what is meant by "Examination without the presence of the Accused 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 this case the delegation of cases whose defendants have not been examined because from the beginning of the escape and not found again in a period of six consecutive months, for the validity must be strengthened by a letter from the commander or head of his unit. The calculation of graceperiod of six consecutive months from the date of the filing to the Court. The substance of the formulation of Porigin 143 provides the requirements for the Trial of Esersi In Absensia, namely:

- a) The deadline for the docket is six months to be calculated the date of the delegation to the Court.
- b) Has been summoned to face trial three times.
- c) Can be carried out against desertion cases whose investigations are conducted in absentia.

When observed, the requirements formulated in the original P143, it is clear the provisions, so that the court only carries out the ordered by the Law. It turns out that in practice many problems, mainly faced with the demands of the unit that wants to accelerate the settlement in order to quickly obtain legal certainty with the consideration that in real terms the soldier is no longer in the unit. This acceleration is in accordance with the original P2 paragraph (4) Undang-Law Nomor 48 year 2009.

Because of the thought to deviate the provisions of the event for the sake of acceleration, namely:

- 1) Whether the six-month deadline and three consecutive subpoenas are imperative or tentative.
- 2) What is the possibility of resolving a desertion case whose investigation is conducted in absentia with a desertion case whose defendant is not present only in the trial, associated with the provisions of time?
- 3) How to determine the end of the implementation of the time of desertion, whether it comes to the time the case is investigated or when the case is tried.

From the description can be presented an inventory of problems related to the trial of desertion cases in absentia, namely:

- a. Regarding the limitations of criminal desertion in absentia. Is desertion in absentia as a case of desertion whose investigation is conducted in absentia, or also a case of desertion whose defendant was not present at trial?
- b. The case of desertion is investigated in absentia, but the Defendant is present at the trial, can the examination continue?
- c. Application of a six-month time limit, and a three-time summons grace period, in the settlement of desertion cases in absentia. Is it preserved, for reasons of acceleration and the importance of unit building?
- d. About the end of the desertion calculation time.

Based on the description above dapat concluded that it is not appropriate under the pretext for legal certainty then a simple, fast justice system is carried out, and light costs (in accordance with Porigin 2 paragraph (4) Undang-Law Nomor 48 year 2009 on the Power of Justice) while waiving legal certainty on the other side as contained in Article 143 of Law-Undang No. 3 1 Year 1997 Tentang Peradilan Militer which will certainly cause harm to the accused when according to Aswanto the defendant has human rights in general can be interpreted as a right attached to the human nature that comes with it, this right that guarantees justice for him. (Aswanto, 2012)

B. Legal Or Law Enforcement Structure

In the process of handling and resolving criminal cases in the criminal justice environment is known the existence of an integrated *criminal justice system (integrated criminal justice system)* consisting of lembaga investigators, prosecutors, judicial institutions and institutions where criminal executors. Each of these institutions has different duties and authorities but in the implementation of its duties are interconnected with each other and have the same position as law enforcement agencies in an integrated criminal system.

- 1) Obstacles to the investigation process by the military police, In the process of investigation often military police get obstacles in the process of collecting data for the

completeness of the docket that has been submitted to the level of Military Oditur after being examined there are deficiencies or not in accordance with the requirements formil or materilnya.

2) Obstacles at the Military Oditurat level.

The processing of cases carried out by the Military Oditur is very influential on the acceleration of case resolution, but there are still cases whose solutions take a relatively long time as an example:

- a. The case is incomplete which is less qualified formil and materiiil making it difficult for the Military Oditur to apply the article to be charged to theSuspect, This adds to the length of time for the process of processing the case,
- b. Military oditur cannot conduct additional checks because the suspect has already fled,
- c. Military Oditur difficulty finding evidence on the alleged crimes committed by the Suspect, even though the evidence is very important presented in the process of processing the suspect's case to make light of the suspect's actions,
- d. The Crime Officer was slow to issue the Decree that had been submitted by the Military Oditur,
- e. There is a difference of opinion between the Military Oditur and Papera on the suspect's actions whether it is a criminal offense or a disciplinary law

3) Obstacles at the level of the Docking Officer.

A Case Officer (papera) is a Case Officer who makes a decision after examining the docket that determines whether the suspect's actions are worthy or not the actions of the suspect in the trial or the actions of the suspectare interspersed through disciplinary law. The publication of Keppera, Kepkumplin, and Keptupra from Papera to the Military Oditur went slowly as a result of lack of coordination and cooperation between the Military Oditur and Papera so that the acceleration of criminal settlement was not achieved

4) Barriers at the level of examination in the Court

In the process of examination in the trial of defendants of desertion crimes that have not been known or In Absensia which in the trial process can not be presented in the trial, then from the absence of the examination process can run better or otherwise the examination process or the trial process will encounter some obstacles. obstacles in resolving desertion cases as follows (Interview Result Rahmansyah Faharuddin, August, 2020) :

- a. The trial process conducted bythe defendants makes the verdict handed down by the Military Court is certainly not perfect or can be said to be unfair to the convicted which will complicate the execution of the sentence,
- b. The implementation of the verdict in the case of desertion in absentia is difficult to immediately implement, where terpidana in the status of desertion can not be arrested then the implementation of the punishment can not be carried out,
- c. Delay in summons summons by the court,

C. Facilities or infrastructure

Tavailability of facilities in the form of facilities and infrastructure for the implementing apparatus in doing its job. The facilities and infrastructure in question are infrastructures or facilities used as a tool to achieve legal effectiveness. Achmad Ali argues that, when wanting to know the extent of the effectiveness of the law, then first of all it should be able to measure "the extent to which the rule of law itu obeyed or not obeyed. Furthermore, Achmad Ali also suggested that in general the factors that influence the effectiveness of a piece of legislation is the professional and optimal implementation of the role, authority and function of law enforcement, both in carrying out the duties charged against themselves and in enforcing the legislation¹. (A. Ali, 2008)

According to Soerjono Soekanto predicts the benchmark effectiveness of elements tertentu of infrastructure. (Soekanto, 2008) The elements are :

1. The existing infrastructure is well maintained.
2. The existing infrastructure must be held by taking into account the number of procurement times.
3. Less infrastructure must be completed immediately.
4. Damaged infrastructure must be repaired immediately.
5. Jammed infrastructure must be launched immediately function.
6. Infrastructure that has suffered a malfunction must be improved again. (Soekanto, 2008)

Without certain facilities or facilities, it will not be possible that the enforcement of hukum will run smoothly.

D. Community

The law is the embodiment or manifestation of the value of belief. As the phrase "*ubi societas ibi ius*" or where there masyarakat then there is a law. The purpose of the law is to protect the interests of man in defending his rights and obligations. People in interacting with each other often can not avoid any clash of interests between them. Conflicts that occur can cause losses, because it is usually accompanied by violations of the rights and obligations of one party to the other. (Purnomo, 1998)

If the citizens only know of a provision of the law, then the level of legal awareness is lower than those who understand it, and so on. That's called *legal consciousness* or knowledge and opinion *about law*.

The cause of the law is irrelevant to the reality of society because the existing law is formed *top-down* that comes from the will of the elite (ruler), while the community is the object of the target. Whereas in order for the law to be responsive, the law must be formed *bottom-up* from the reality that lives in society. In essence, the issue of legal awareness of citizens concerns factors-factors whether a particular legal provision is known, understood, obeyed, and appreciated.

4. Conclusion

The application of military criminal law against TNI members who are proven to commit desertion crimes is the authority of the Military Judiciary to prosecute him, then the stages in the form of investigations conducted by the Military Police on the orders of the Superiors Entitled to Punish (Ankum). furthermore, the investigation file is given to

the Military Oditur to be studied, then the Military Oditur makes an indictment to be delegated to the Military Judiciary, after the judiciary feels sufficient with the file of the Military Oditur, then the Military Judiciary will prosecute members of the Military who are accused of desertion. Regarding the constraints in law enforcement related to the Crime of Desertion reviewed from 4 interrelated aspects, namely with regard to the substansi law, the legal structure itself, facilities or infrastructure, and the community.

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