

The Process Of Investigation Against Criminal Activities Who Are Not Attending Without Permission (THTI) And Desertion In The Military Environment

Safrullah Safrullah^{*)}, Denny Suwondo^{**)} and Lathifah Hanim^{***)}

^{*)}Indonesian National Army email : safrullohkuda02@gmail.com

^{**)} & ^{***)} Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Abstract

The purpose of this research is to find out and analyze the factors that cause the occurrence of criminal acts Not Present Without Permission (THTI) and desertion in the military environment. To know and analyze the process of investigating criminal acts who are not present without permission (THTI) and desertion in the military. This study uses a normative juridical approach, with descriptive research specifications. The data used in this study is secondary data obtained through literature study. The results of this study are the factors that cause the occurrence of criminal acts of absent without permission (THTI) and desertion in the military environment are family factors, mental factors, economic factors (financial), intention factors, and mental unprepared factors. Investigation Process Against Criminals Who Are Absent Without Permission (THTI) and Desertion in the Military there is a report from the unit commander to the military police, summons of suspects and witnesses, examination of suspects and witnesses, arrests and detentions, making a decision on the surrender of the case.

Keywords : Investigation, Crime, Absence Without Permission (THTI), Desertion

1. Introduction

The Preamble to the 1945 Constitution of the Republic of Indonesia mandates that the national goal is to "protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace, and social justice." To achieve the mandate of the 1945 Constitution of the Republic of Indonesia requires the joint efforts of the entire Indonesian nation. These joint efforts are realized in the roles, functions and duties of each component of the nation and are carried out seriously. National Defense is one form of the Indonesian nation's efforts in achieving national goals. The essence of national defense is the participation of every citizen as the embodiment of their rights and obligations in the national defense effort. The rights and obligations of each citizen are regulated in Article 30 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, while paragraph (2) emphasizes that national defense efforts are carried out through a universal people's defense and security system, namely that the National Army Indonesia is the main force and the people are the supporting force.¹

The progress achieved in the reform era is enough to give better hope, but on the other hand, the current swift current of globalization has caused many problems in almost all aspects of human life. All social, cultural, religious, political, economic,

¹Elucidation of the Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army

educational, scientific and technological aspects are vulnerable areas due to fundamental changes and require a legal umbrella for housing.²

The Indonesian National Army is an organization that acts as a means of state defense in charge of upholding state sovereignty, defending the territorial integrity of the Unitary State of the Republic of Indonesia, and protecting the entire nation and the entire homeland of Indonesia from threats and disturbances to the integrity of the nation and state. TNI soldiers. The forms of deviation include, among others, violations of the military discipline law committed by members of the TNI which are resolved by disciplinary law. Meanwhile, crimes committed by members of the TNI are resolved by military criminal law in military courts, because the TNI is subject to military courts.

Discipline provisions for TNI soldiers are regulated in Law Number 25 of 2014 concerning Military Discipline of the TNI (formerly ABRI) and the Decree of the Commander of the TNI Number: Kep/22/VIII/2005 dated August 10, 2005 concerning the Regulation of Military Discipline of the TNI. These two regulations regulate how soldiers must behave with discipline in carrying out their service obligations. This means that discipline is the basis for the daily life of soldiers, the slightest violation is a very disgraceful thing for a TNI soldier. A high level of military discipline can reduce the occurrence of violations. . A strong and solid TNI and supported by high discipline from its members will ensure the upholding of the Unitary State of the Republic of Indonesia.

The police must be returned to their main duties as officers who maintain public order (security, public order), law enforcement officers, as law enforcement officers, the Police as an organization are very appropriate if the Police stand alone and are not part of the state defense apparatus with the TNI.³

According to Law No. 25 of 2014 concerning Military Disciplinary Law Chapter I article 1, military discipline law is the rules and norms for regulating, fostering, enforcing discipline, and living arrangements that apply to the military. Military Disciplinary Law is implemented based on the following principles: 1. Justice; 2. Coaching; 3. Equality before the law; 4. Presumption of innocence; 5. Hierarchy; 6. Unity of Command; 7. Military Interests; 8. Responsibilities; 9. Effective and Efficiency; and 10. Benefits.

The objectives and functions of the Military Disciplinary Law according to Law No. 25 of 2014 concerning Military Disciplinary Law Chapter II articles 4-5, are as follows: The purpose of the Military Disciplinary Law is to realize organizational development, personnel development, development and improvement of military discipline, and enforcement Military Disciplinary Law with attention to expediency and justice. Military Disciplinary Law functions as a means to: a. Creating legal certainty and legal protection for the military and preventing the abuse of ANKUM's

²Heni Agustningsih and Sri Endah Wahyuningsih, 2018, Decision of Linked with Narcotics Convicted in Act No. 35 Of 2009 in The District of Sumber Court, in Jurnal Daulat Hukum Volume 1 (3), Published Master Of Law, Faculty of Law Unissula, p. 597, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3343/2471>

³Iwan Setiyadi and Sri Kusriyah, 2019, Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police (Inp) On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter), Jurnal Daulat Hukum Volume 2 Issue 2, ISSN: 2614-560X

authority; and b. Upholding the order of life for each military in carrying out their duties and obligations.

Military Criminal Law is a special criminal law. Military Criminal Law is called special criminal law because it has specificities such as different objects. The Military Criminal Law only regulates violations or crimes committed by TNI soldiers according to the provisions of the applicable law.⁴

Military crime is a crime committed by the legal subject, namely the military. This kind of crime is called a pure military crime (Zuiver Militeire Delict). Pure Military Crime is a crime that is only committed by a military person, because it is specific to the military. Example: THTI crime as stipulated in Article 86 of the Military Criminal Code (KUHPM). Crimes committed by members of the TNI are purely military based on regulations related to the military. TNI members who commit purely military crimes as stated in the military criminal law include crimes, namely: crimes against state security, crimes in war obligations, crimes of not being present illegally because they can intentionally be committed in times of peace or war (THTI),

Criminal acts that occur are not only seen as violations of individual interests, but are also considered as violations of the rule of law.⁵ Crimes are usually equated with offenses which come from the Latin word *delictum*.⁶

Acts that are threatened with criminal law are actions that absolutely must meet formal requirements, namely matching the formulation of the law that has been stipulated by the Criminal Code and other regulations that have a criminal dimension, and have a material element that is contrary to ideals. - ideals regarding community association or in short a nature against the law or a criminal act.⁷

The purpose of this study is as follows: To find out and analyze the factors that cause the occurrence of criminal acts Not Present Without Permission (THTI) and dissertation in the military environment. To know and analyze the process of investigating criminal acts who are not present without permission (THTI) and dissertation in the military environment.

2. Research methods

This study uses a normative juridical approach, with descriptive research specifications. The data used in this study is secondary data obtained through literature study.

⁴Moch. Faisal Salam, 2006, *Military Criminal Law in Indonesia*, Mandar Maju, Bandung

⁵Sisno Pujinoto, Anis Mashdurohatun and Achmad Sulchan, *Juridical Analysis Of Application Of Forgiveness (Rechterlijk Pardon) As A Basis Of Judge Consideration In Deciding The Criminal*, *Jurnal Daulat Hukum* Volume 3 Issue 2, June 2020 ISSN: 2614-560X

⁶Yustisi Yudhasmara, Umar Ma'ruf and Sri Endah Wahyuningsih, *Criminal Imprisonment for Criminal Offenses Insults the President after State Court Decision Number: 013-022 / PUU-IV / 2006 (Study on State Court Blora Decision Number: 47 / PID. SUS / 2017 / PN.Blora)*, *Jurnal Daulat Hukum* Volume 3 Issue 1, March 2020 ISSN: 2614-560X

⁷Moeljatno, 1983, *Criminal Acts and Accountability in Criminal Law: First Printing*, Bina Aksara, Yogyakarta, pp. 24-25.

3. Discussion

3.1. Factors that lead to criminal acts of absent without permission (THTI) and dissent in the military environment

During their service, TNI soldiers are instilled in the guidelines of life that are used to carry out tasks such as the Soldier's Oath. These guidelines are expected to be a filter for soldiers' lives to be devoted to God Almighty, to be chivalrous, honest, and responsible for their actions. An attitude that must be carried out by every TNI soldier from the lowest rank to the highest rank. So that when an Indonesian citizen signs a contract to choose a professional path as a TNI soldier, he should have realized that being a soldier is not to look for wealth and to be a person who lives a luxurious life,⁸ but being a soldier is a noble profession because it sincerely serves the country and nation without demanding an excessive life. For soldiers, the implementation of the main task is everything. Meanwhile, the TNI as an institution as part of the components of the Indonesian nation is required to act professionally, effectively and efficiently, modernly and always loved by its people. For this reason, the professionalism of soldiers must continue to be improved by practicing and always adding skills and complying with all regulations that apply to soldiers.

According to the time, desertion was carried out in time of peace and in time of war. Meanwhile, according to its form, desertion is divided into two, namely the pure form of desertion which is regulated in Article 87 paragraph (1) to the 1st and the form of desertion as an increase from the crime of Unlicensed Absence (THTI) which is regulated in Article 87 paragraph (1) 2 and 3.⁹ Of the two forms of desertion, the most frequently committed by soldiers is the second form of desertion, namely desertion as an increase from the crime of THTI, which is regulated in Article 87 paragraph (1) to 2 of the Criminal Procedure Code.¹⁰ This is because the formulation of Article 87 paragraph (1) of the 2nd KUHPM stipulates a relatively easy proof, only based on the attendance/absence list, both absent from the morning and afternoon apples, plus information from related officials can already be used as evidence of a desertion crime case. In other words, the soldier's absence without permission for a certain period of more than 30 days can be used as evidence for a desertion crime case. In addition, the formulation of Article 87 paragraph (1) 2 which formulates an error intentionally or because of a mistake caused the Military Public Prosecutor as a public prosecutor, it is not necessary to prove whether the THTI action carried out by the suspect in the criminal case of desertion was carried out intentionally or due to negligence.

There are not many documents in the history of the Indonesian military that describe desertions, especially those committed by Indonesian soldiers/militaries. Cases of desertion that often occur by TNI soldiers generally originate from the crime of Unauthorized Absence (THTI) which ends in desertion. In the post-independence period, desertion actually occurred when the situation was peaceful. In general, desertions occur because of personal problems (debts, economics) and

⁸Endiartono Sutarto, 2005, Obligations of Soldiers to Serve the Nation, Book 2, Puspen TNI, Jakarta, p. 13.

⁹SR Sianturi, 1985, Military Criminal Law in Indonesia, hereinafter referred to as Sianturi I, AHAEM-PETEHAEM Alumni, Jakarta, p. 272.

¹⁰Military Criminal Code

are carried out personally. However, there were cases of desertion that occurred in a battle before Indonesia's independence, namely when the Japanese invaded the island of Sumatra, many members of the KNIL (Dutch Indies Army) did not follow the orders of their commanders.¹¹

The problem of crime is a human problem which is a social reality, whose causes are poorly understood because the study has not been in the right proportions dimensionally. The development or increase in crime as well as a decrease in the quality and quantity of crime, both in big cities and in villages, are relative and interactive in nature. It can be understood that crime is the shadow of civilization, is a shadow of civilization and there is even a theory that says that crime is a product of society.¹²

WA Bonger defines crime as an act that is very anti-social which gets a conscious challenge from the state in the form of giving suffering (punishment and action).¹³

And regarding this crime, it cannot happen without a cause. In the book *Interests in Criminal Law and Criminal Procedure* by Andi Hamzah said that the factors that might influence a person to commit a crime can be broadly divided into two factors. The first factor is found in the perpetrator, and the second factor is factors that are outside the person of the actor, namely members of the community or the humans who surround him (environmental factors).¹⁴

And to get a definite answer to what is the cause of the criminal act of desertion in TNI soldiers (Indonesian National Army) is very limited and determined by each of the perpetrators. Because this desertion can occur due to various reasons or motives.

The factors that lead to the occurrence of criminal acts of absent without permission (THTI) and dissent in the military environment are: *first*, Family Factor. Because the household or family of the perpetrator is usually not in harmony anymore, conflicts, fights often occur and maybe because of unpaid debts in the household/family. Whereas the family environment is the most important factor in the formation of a person's character and character which will be a benchmark for being able to socialize outside his environment. But if this does not work properly, it can cause someone to act and behave outside the norms that apply in society and those made by officers.

Second, Mental Factor. The crime of not being present without this permission occurred that some soldiers were not mentally prepared in carrying out the duties and obligations of a soldier, in which the life of a soldier, especially those who served in a battalion or combat unit were required to practice, practice and practice for preparedness in all kinds of situations. conditions to maintain the integrity of the Unitary State of the Republic of Indonesia.

Third, Economic Factors (Finance). Usually more related to family finances, especially if the soldier has accumulated debts that cause the soldier stress, where

¹¹Susiani, 2014, *Military Crimes of Desertion in Indonesia*. Adalusia Mother Earth. Jakarta. Thing. 117.

¹²Ridwan Hasibuan, 1994, *Criminology in a Narrow Meaning and Forensic Sciences*. Mandar Maju, Bandung, p. 5.

¹³WA Bonger. 1982, *Introduction to Criminology*, Ghalia Indonesia, Jakarta, p. 25.

¹⁴Andi Hamza. 1986, *Anthology of Criminal Law and Criminal Procedure*, Ghalia Indonesia, Jakarta, p. 51.

as is well known that crime arises because of poverty. When a person lives in complete deprivation, it will cause them to do whatever it takes to fulfill their needs.

Fourth, Intention Factor. The perpetrator usually has no desire to become a soldier. If someone has entered and has become a member of the TNI, it is very difficult for him to escape from the bond of service. This causes him to carry out all his duties and obligations of his service no longer with full responsibility, and trying to find faults so that he can be fired and expelled from the unit.

Fifth, Factors Not Mentally Prepared. Assigned in Conflict and Remote Areas This is due to the lack of training and mental readiness of the soldiers if they are to be deployed in conflict and remote areas. Because one duty and obligation of a soldier is only to always be ready to be deployed to areas that are being hit by turmoil and on remote islands throughout Indonesia. Soldiers must always be ready for it at any time be assigned anywhere.

3.2. The Investigation Process Against Criminals Who Are Not Present Without Permission (THTI) and Dissertation in the military

One of the most common and still occurring crimes in the military throughout Indonesia is desertion. The definition of desertion according to article 87 of the Criminal Procedure Code, which essentially means a military person who intentionally does not attend or leave his duties without permission in peacetime for 30 (thirty) days or for 4 (four) days during wartime. The act of leaving the task that will cause chaos that will disrupt the stability of the unit as a whole, on that basis the search for the perpetrator of the crime of desertion must be carried out immediately. However, sometimes the search process, the enforcement process, until the imposition of sanctions on deserters is difficult and convoluted because it takes many parties to search and takes some time.

Criminal law can only be used if other sanctions have been applied and are in accordance with the relatively large level of guilt of the perpetrator or causing public unrest. The principle of subsidiarity places criminal law as the *ultimum remedium*, which is a last resort if other sanctions are not adequate, even though in principle it can be applied if the business actor is a recidivist who commits a crime violation.¹⁵

The Process of Investigation Against Criminals Who Are Absent Without Permission (THTI) and Dissertation in the Military there is a report from the unit commander to the military police, summons of suspects and witnesses, examination of suspects and witnesses, arrests and detentions, making a decision on the surrender of the case.

4. Closing

Based on the discussion in this study, it can be concluded based on the problems found as follows: The factors that cause the occurrence of the crime of absent without permission (THTI) and dissertation in the military environment are family factors, mental factors, economic factors (financial), factors Intention, Factors Lack of Mental Preparedness. Investigation Process Against Criminals Who Are

¹⁵Arif Kristiawan, Sri Endah Wahyuningsih, Rakhmat Bowo Suharto, 2018, Perspective of Administrative Crime Against Mining Crimes Without Permit (Crate) in Law Number 4 Year 2009 Concerning Minerals and Coal, Jurnal Daulat Hukum Vol. 1. No. 1 ISSN: 2614-560X

Absent Without Permission (THTI) and Dissertation in the Military there is a report from the unit commander to the military police, summons of suspects and witnesses, examination of suspects and witnesses, arrests and detentions, making a decision on the surrender of the case. Suggestions from this research are Military law enforcement officers in uncovering desertion cases are even more assertive in responding to, resolving and taking action in the event of a desertion so that the process does not drag on so that it takes quite a long time.

5. Bibliography

Journals

- [1] Arif Kristiawan, Sri Endah Wahyuningsih, Rakhmat Bowo Suharto, 2018, Perspective of Administrative Crime Against Mining Crimes Without Permit (Crate) in Law Number 4 Year 2009 Concerning Minerals and Coal, Jurnal Daulat Hukum Vol. 1. No. 1 ISSN: 2614-560X
- [2] Heni Agustiningsih and Sri Endah Wahyuningsih, 2018, Decision of Linked with Narcotics Convicted in Act No. 35 Of 2009 in The District of Sumber Court, in Jurnal Daulat Hukum Volume 1 (3), Published Master Of Law, Faculty of Law Unissula, p. 597, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3343/2471>
- [3] Iwan Setiyadi and Sri Kusriyah, 2019, Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police (Inp) On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter), Jurnal Daulat Hukum Volume 2 Issue 2, ISSN: 2614-560X
- [4] Sisno Pujinoto, Anis Mashdurohatun and Achmad Sulchan, Juridical Analysis Of Application Of Forgiveness (Rechterlijk Pardon) As A Basis Of Judge Consideration In Deciding The Criminal, Jurnal Daulat Hukum Volume 3 Issue 2, June 2020 ISSN: 2614-560X
- [5] Yustisi Yudhasmara, Umar Ma'ruf and Sri Endah Wahyuningsih, Criminal Imprisonment for Criminal Offenses Insults the President after State Court Decision Number: 013-022 / PUU-IV / 2006 (Study on State Court Blora Decision Number: 47 / PID. SUS / 2017 / PN.Blora), Jurnal Daulat Hukum Volume 3 Issue 1, March 2020 ISSN: 2614-560X

Book

- [1] Andi Hamza. 1986, Anthology of Criminal Law and Criminal Procedure, Ghalia Indonesia, Jakarta,
- [2] Endiartono Sutarto, 2005, Obligations of Soldiers to Serve the Nation, Book 2, Puspen TNI, Jakarta
- [3] Moch. Faisal Salam, 2006, Military Criminal Law in Indonesia, Mandar Maju, Bandung
- [4] Moeljatno, 1983, Criminal Acts and Accountability in Criminal Law: First Printing, Bina Aksara, Yogyakarta
- [5] Ridwan Hasibuan, 1994, Criminology in a Narrow Meaning and Forensic Sciences. Mandar Maju, Bandung
- [6] SR Sianturi, 1985, Military Criminal Law in Indonesia, hereinafter referred to as Sianturi I, AHAEM-PETEHAEM Alumni, Jakarta

- [7] Susiani, 2014, Military Crimes of Desertion in Indonesia. Adalusia Mother Earth. Jakarta
- [8] WA Bongor. 1982, Introduction to Criminology, Ghalia Indonesia, Jakarta