

Efforts to Resolve the Criminal Act of Desertion Committed by the Indonesian National Army at the III-12 Surabaya Military Court

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Abstract. *This study examines efforts to resolve the crime of desertion committed by Indonesian National Army (TNI) soldiers at the III-12 Surabaya Military Court. Desertion, as a serious violation of military law (Article 87 of the Criminal Code), threatens the integrity of the TNI and national security. Various internal (family, economic, mental) and external factors (unclear regulations, assignment, treatment by superiors) contribute to desertion. The normative research method was chosen because it allows for an in-depth analysis of applicable legal regulations and judicial practices related to desertion, by examining relevant laws and court decisions. The results of the study indicate the existence of internal factors, such as economic and psychological problems of soldiers, as well as external factors, such as less supportive internal TNI policies and treatment by superiors. This study highlights the need for a more comprehensive and humanistic approach in dealing with the problem of desertion. The results of the study indicate that the military justice process, despite its special characteristics, must still uphold justice and human rights. The sanctions imposed vary, including imprisonment and dismissal from military service. The study recommends a more humane and rehabilitative approach to handling desertion, including counseling and character building programs, to prevent recurrence of similar acts and improve the discipline and morale of TNI soldiers. There is also a need for an evaluation of the transparency and effectiveness of the military justice system, as well as a more comprehensive understanding of the factors causing desertion to create more effective policies.*

Keywords: Army; Desertion; Military; Rehabilitation; Soldier.

1. Introduction

The Indonesian National Army (TNI) is a part of the general public that is specially prepared to carry out the task of defending the state and nation, as well as

maintaining national defense and security.¹It is a small part of society that is prepared to defend the nation and state.²

The position of the TNI itself as a state institution is regulated separately in Article 30 paragraphs 2, 3, and 5 of the 1945 Constitution.³In a country it is certain that there must always be military power to support and maintain the unity, unity and sovereignty of a country. The word Army or other term "military" comes from the word "miles" which in Greek means someone who is armed and prepared to do battle or war especially in the context of national defense and security.⁴

The Indonesian National Army is the main component of the defense of the Indonesian state, tasked with repelling threats from both outside and within the country. Like other countries in the world, Indonesia also has a military power often referred to as the Indonesian National Army.

The implementation of the Indonesian National Army has several roles and responsibilities in maintaining the sovereignty and security of the country. Before the Indonesian National Army maintains security over the sovereignty of Indonesia, the soldiers must undergo education and training where members of the Indonesian National Army undergo education, training, and provision to understand the obligations, prohibitions, and rules that apply in the Indonesian National Army service. This includes understanding the laws and regulations governing the Indonesian National Army, in this case members are required to obey and may not resist any existing orders.⁵With the development of increasingly advanced environmental conditions and the occurrence of national reforms in Indonesia, the government issued Law No. 34 of 2004 concerning the TNI with the aim of making the TNI's duties more focused.⁶

Law No. 34 of 2004 concerning the Indonesian National Army, the TNI as a defense tool of the Unitary State of the Republic of Indonesia has the task of implementing state defense policies to uphold state sovereignty, maintain territorial integrity and protect the safety of the nation, carry out military operations for war and

¹Munsharif Abdul Chalim, The Role and Position of the Indonesian National Army (TNI) in the Draft National Security Law Reviewed from the Perspective of Legal Politics in Indonesia, *Journal of Legal Reform*, Vol II No 1, 2015, p. 102.

²Nadilla Afifah, M. Iqbal, Criminal Acts of Desertion During Peacetime Committed by Members of the Indonesian Army, *Student Scientific Journal*, Vol 5, No 4, 2021, p. 703.

³Muhammad Adlan Kamil, A. Salman Maggalatung, Legality of Active TNI Members Holding Concurrent Civilian Positions: A Study of Law Number 34 of 2004 Concerning the Indonesian National Army, *Journal of Legal Research*, Vol 4, No 2, 2022, p. 292.

⁴SR Sianturi, *Military Criminal Law in Indonesia*, Indonesian National Army Legal Development Agency, Jakarta, 2010, p. 28.

⁵Astri Dewi Setyarini¹, Irwan Triadi, Desertion Violations in Military Soldiers, *Journal of Social Sciences Research*, Vol 1, No 5, 2023, p. 55.

⁶Bambang Slamet Eko Sugistiyoko, Criminal Acts of Desertion in Absensia by Military Members, *Unita Journal*, Vol 4, No 1, 2018, p. 51.

military operations other than war and actively participate in regional and international peacekeeping tasks. In Law No. 34 of 2004 concerning the Indonesian National Army, the TNI as a defense tool of the Unitary State of the Republic of Indonesia has the task of implementing state defense policies to uphold state sovereignty, maintain the territorial integrity of the Republic of Indonesia and protect the safety of the nation and state, carry out military operations for war and military operations other than war and actively participate in world peacekeeping tasks. Regarding the main tasks of military law, it is regulated in Article 64 of Law No. 34 of 2004, namely

*"Military law is fostered*The People's Army, namely an army whose members come from Indonesian citizens; and was developed by

government for the interests of implementing national defense interests."

In Law No. 34 of 2004 concerning the TNI, Article 2 also emphasizes the identity of the Indonesian National Army (TNI), namely:

- 1) The People's Army, namely an army whose members are Indonesian citizens.
- 2) Warrior Soldiers, namely soldiers who fight to uphold the Unitary State of the Republic of Indonesia and do not know surrender in carrying out and completing their duties.
- 3) The National Army, namely the Indonesian national army which serves in the interests of the state above the interests of regions, tribes, races and religious groups and,
- 4) Professional soldiers, namely soldiers who are trained, educated, well equipped, do not practice politics, do not do business, and whose welfare is guaranteed, and follow the state's political policies which adhere to the principles of democracy, civil supremacy, and human rights.

Members of the Indonesian National Army (TNI) must submit to and obey the legal provisions applicable to the military, namely Law No. 31 of 1997 concerning Military Justice, Law No. 34 of 2004 concerning the Indonesian National Army, Law No. 25 of 2014 concerning Military Disciplinary Law. and other regulations. These military law regulations are applied to all TNI soldiers, both Privates, Non-Commissioned Officers, and Officers who commit acts that are detrimental to the unit, the general public and the State, if there are soldiers who do not comply with the existing regulations, then the soldier is said to have committed a crime. One of the military crimes that is categorized as a pure crime is the act of desertion. In addition to the provisions referred to, TNI soldiers are also not exempt from other regulations that apply in the Republic of Indonesia as they apply to the general public in the Republic of Indonesia.

Law of the Republic of Indonesia No. 34 of 2004 concerning the Indonesian National Army states that the TNI as a defense tool of the Unitary State of the Republic of Indonesia has the task of implementing state defense policies to uphold state sovereignty, maintain the integrity of the territory of the Republic of Indonesia and protect the safety of the nation and state, carry out military operations for war and military operations other than war and actively participate in the task of maintaining world peace.

The implementation of military law is a fundamental element in maintaining discipline and organizational structure in the military, especially in the Indonesian National Army (TNI). TNI as a national defense institution has the responsibility to maintain the sovereignty and security of the nation. In this context, discipline is an absolute requirement for every soldier, because they are faced with situations that require high compliance with orders and procedures. However, in practice, there are still challenges that must be faced. One type of criminal act that is often committed by Indonesian National Army (TNI) soldiers is the crime of desertion as regulated in Law No. 39 of 1947 concerning the Military Criminal Code (KUHPM) specifically in Article 87 which is a way for a military person to withdraw from carrying out his service obligations. Desertion, which means leaving military duties intentionally or without permission, is a serious violation that can harm the military unit from the mission being carried out, because it is prohibited.

Desertion can be divided into several types, including temporary desertion, where soldiers leave their duties for a short period of time but with the intention of returning, and permanent desertion, where soldiers have no intention of returning. In the legal context, desertion is categorized as an offense that can be subject to severe sanctions, including imprisonment or dismissal from service. It is important to understand that desertion does not only affect the individual who commits the offense, but can also affect the morale and spirit of the unit. Uncertainty about the compliance of unit members can create instability and affect operational effectiveness.

The application of military law is regulated in Law No. 31 of 1997 concerning Military Justice and the Military Criminal Code (KUHPM). In this law, desertion is specifically regulated, with clear definitions and sanctions. The military legal process allows military courts to handle desertion cases, where there are different investigation and trial mechanisms than the civilian legal system. This reflects the need for an appropriate approach to address violations that occur in the military context, which often have different characteristics and needs than civilians. Basically, desertion is a serious, serious, and universal military crime. Because all armed forces in all countries regulate desertion as a serious military crime. In Indonesia, desertion is regulated in Article 87 of the Criminal Code which reads:

1. Threatened for desertion, Military:

1st, those who leave with the intention of withdrawing permanently from their service obligations, avoiding the danger of war, going over to the enemy or entering military service in another country or power without being justified in doing so.

2nd, who due to his own fault or intentionally is absent without permission in peacetime for more than thirty days, in wartime for more than four days.

day.

3rd, those who intentionally carry out absences without permission and because they do not participate in part or all of an ordered trip.

2. Desertion committed in peacetime is punishable by a maximum prison sentence of two years and eight months.

3. Desertion committed during wartime is punishable by a maximum prison sentence of eight years and six months.

Factors Causing Desertion in the TNI Desertion can occur due to various factors. Among them are internal factors such as family/household, economy, intention, age, mentality. This situation is worsened by external factors such as lack of understanding of regulations in force in the TNI environment, inappropriate tasks and placements, environmental factors, factors of treatment by superiors/seniors and authorities. In fact, every TNI soldier is required to be obedient to authority with a tradition of command, high esprit de corps, solid cooperation, high cohesion and strong discipline.⁷

TNI soldiers must internalize, understand and implement the philosophy of *Dwi Warna Purwa Cendekia Wusana*, which means Loyalty to the Nation and State is the main and first. The Unitary State of the Republic of Indonesia (NKRI) is a non-negotiable price for the TNI because the TNI is the spearhead in maintaining the unity, integrity and sovereignty of the NKRI, because without such an attitude it is certain that the spirit of nationalism in every TNI soldier will inevitably fade away, eaten away by time, therefore TNI soldiers must truly carry out the duties and responsibilities outlined in the Law on the Indonesian National Army.⁸

It is impossible to create strong, tough TNI soldiers if the soldiers in question do not have high loyalty to the unit, nation and state and of course this will greatly endanger the existence of a country because it cannot be denied that the TNI is one of the assets owned by the nation and state of the Republic of Indonesia to maintain security and maintain the sovereignty of the Republic of Indonesia. The

⁷Kartini Kartono, *ABRI and the Problems of Reflective Thinking on the Role of ABRI in the Era of Development*, Mandar Maju, Bandung, 1996, p. 4.

⁸Djoko Subroto, *ABRI's Vision Looking to the Future*, Gajah Mada University Press, Magelang, 1997, p. 10.

crime of desertion committed by TNI members certainly has an effect on military institutions, because military institutions have their own rules in processing or trying TNI members who commit the crime of desertion and are processed in accordance with military procedural law. Research on desertion in the TNI shows that in many cases, soldiers who desert are not only acting against regulations, but are also often under pressure that affects their decision-making. Therefore, a better understanding of the background of soldiers who desert needs to be a concern for TNI leaders.

Challenges in the Implementation of Military Law Although military law provides the authority to respond to desertion cases, there are significant challenges in its implementation. The legal process in military courts is sometimes considered less transparent than in civilian courts.

There is a possibility of injustice experienced by soldiers faced with difficult situations, where they may not receive adequate defense. In this context, it is important to evaluate how the military justice system can be improved to ensure that every soldier gets his or her due process of law, while maintaining discipline in the armed forces.

Legal certainty for defendants whose perpetrators are TNI has a significant impact on the development of unity, troop integrity and task mobility, therefore the accuracy and speed of resolving cases of criminal acts of desertion need to be handled effectively and efficiently.⁹And a Humanist Approach is Needed in Handling Desertion Given the complexity faced by soldiers who desert, it is important to adopt a more humanist approach in handling this case. In addition to strict law enforcement, there needs to be rehabilitation and recovery efforts for the soldiers involved. This approach can include counseling programs, mental support, and character building designed to help soldiers get back on the right track. By giving a second chance to soldiers who have made mistakes, the TNI can rebuild trust and morale within the unit, and reduce the possibility of repeated desertion in the future.

The settlement of criminal acts within the Indonesian National Army (TNI) environment requires regulations to achieve integration of the way of acting between officials who are given authority in resolving criminal cases within the TNI environment. Therefore, the Decree of the Chief of Staff of the Army Number: SKEP/239/VII/1996 concerning Guidelines for the Settlement of Criminal Cases within the TNI AD Environment was issued,

⁹Ni Wayan Ratna Satyastuti, Calista Ayu Tunjung Sari, Vanrick Adhi Vaundra, The Process of Resolving the Criminal Act of Desertion Committed by Members of the Indonesian National Army, *Verstek Journal*, Vol 4 No 2, 2016, p. 159.

as an elaboration of the Decree of the Commander of the Indonesian Armed Forces Number: Decree/71 I/X/1989 concerning the resolution of criminal cases within the Indonesian Armed Forces.

If a criminal act is committed by a member of the TNI, the Military Police are obliged to carry out investigative actions in accordance with the methods and procedures regulated in the Criminal Procedure Code (KUHAP) and Law No. 31 of 1997. Article 69 of Law No. 31 of 1997:

Investigator's rights to;

- 1) The Ankum Towards his subordinates (Ankum)
- 2) Military police (POM)
- 3) Military Prosecutors in the Military Court environment (Military Oditur)

Thus, the Military Police is one of the backbones that enforces legal norms within the TNI environment.¹⁰ According to the function of the Military Police which is a technical function, it directly determines the success of TNI development and the implementation of Defense and Security operations. In addition, to increase legal awareness, discipline and order which are the main requirements in the lives of soldiers reflected in their attitudes, behavior, actions and devotion, strict and continuous supervision is needed by the Military Police.

If we look closely at the substance of Article 64 of Law No. 34 of 2004 concerning the TNI which states "Military law is fostered and developed by the government for the interests of organizing the interests of national defense". When connected with the provisions of Article 87 of the Criminal Code concerning TNI members who commit the crime of desertion with the intention of withdrawing from carrying out their service obligations, then it can be understood and interpreted that in the soldier who deserts, an attitude must be reflected that he no longer has the desire to be in military service. This attitude can be realized in the act of the person concerned leaving the unit within a minimum grace period of 30 (thirty) consecutive days or the act of withdrawing forever, because in everyday military life, his readiness is demanded in the place where he must be, without this it is difficult to expect him to become a military man who is able to carry out his duties properly. In military life, acts of absence from a place to carry out service are determined to be a crime, because the appreciation of discipline is a very urgent matter in military life, unlike in organizational life outside the military, where the act of leaving service is not a crime, but rather only a violation of organizational discipline.

¹⁰Moch. Faisal Salim, 2006, *Military Criminal Law in Indonesia*. Mandar Maju, Bandung, p. 13.

The application of military law in resolving cases of desertion by TNI soldiers requires a balanced approach between law enforcement and recovery. The process of resolving military crimes, especially desertion, is generally different from general crimes, the difference lies in the subject that military crimes are committed by a military person as referred to in Article 4 paragraph

1 Law No. 34 of 2004 states that soldiers are members of the military.

TNI consisting of the Army, Navy, and Air Force while general crimes are committed by civilians. A reality until now is that many military units are still found whose personnel leave the service without permission from the unit commander for more than 30 (thirty) days in a row or desertion with various different modus operandi/motives. As happened in the area of the III-12 Surabaya Military Court, in 2023 with a brief chronology of the occurrence of the Desertion case, on May 10, 2023, Praka Saenal committed the Criminal Act of Desertion by leaving the unit without the knowledge of the Dansat and finally on June 28, 2023, the DPO was arrested for the crime of Desertion (Leaving the unit for more than 30 days without permission from the Dansat) by Pomdam XIV/HSN after undergoing the process and carrying out the punishment, he committed the Criminal Act of Desertion again from March 15, 2024 until now, this is stated in Decision Number 148-K/PM.III-12/AD/XI/2023, Decision Number 149-K/PM.III-12/AD/XI/202 And

Decision Number 150-K/PM.III-12/AD/XI/2023 with various modes and motives of action.

The legal responsibility for TNI soldiers who commit the crime of desertion is often unclear, especially in the application of fair and transparent sanctions in the military legal process. Although Law No. 34 of 2004 and the Military Criminal Code (KUHPM) have regulated desertion, challenges in its implementation can cause injustice to the soldiers involved. Efforts to resolve the crime of desertion also need to be evaluated, considering the many modus operandi carried out by soldiers who desert, indicating the need for a systematic and rehabilitative approach, not just punishment. In addition, the lack of understanding of the factors causing desertion, both from internal aspects such as psychological and economic, as well as external aspects such as the work environment and treatment by superiors, is a significant problem. A better understanding of this background is essential to creating effective policies and programs in preventing desertion, as well as to improve the discipline and morale of TNI soldiers. By identifying this gap, research can make a significant contribution to the development of policies and practices within the TNI environment in dealing with the problem of desertion.

Maintaining discipline and integrity for TNI members is essential to understanding the reasons behind desertion and providing necessary support to soldiers. Recommendations to improve the military legal system include better training for legal officers, transparency in the legal process, and the development of a

comprehensive rehabilitation program. Thus, it is hoped that the TNI can reduce the number of desertions and create a more supportive environment for soldiers in carrying out their duties.

2. Research Methods

Research Methodology is the science of the methods that will be used in conducting research.¹¹ Legal research is basically divided into two (2) types, namely Normative Research and Empirical Research. Normative Research is research using secondary data, so it is also called library research, while what is meant by Empirical Research is direct research in the community, some of which are through questionnaires or direct interviews.¹²

3. Results and Discussion

3.1. Legal Responsibility for Indonesian National Army Members Who Commit the Crime of Desertion

Indonesia is a country of law based on the norms contained in the 1945 Constitution and Pancasila. Indonesia itself as a country of law adheres to existing laws, these laws are created or made on the basis of creating a safe and orderly community life, the balance between law and life in society is important to be done so that the interests of the community itself can run and be guaranteed as they should. Therefore, the law itself is created not to favor the interests of a group but must encompass all the interests of the community in it, where in this case the duties and authorities must be stated in it, also encompassing how to resolve it if in the end there are norms or laws that are violated. In this case, Indonesia itself has a group to protect the unity and integrity of the country, namely the Indonesian National Army (TNI) where the duties and authorities of the Indonesian National Army (TNI) are to maintain order and security of the Unitary State of the Republic of Indonesia, whether it is an attack from outside or from within the country itself. In its implementation, the Indonesian National Army (TNI) has several roles and responsibilities in maintaining the sovereignty and security of the country.¹³ An organization based on rules and including the 'military' label has so far been viewed as a closed organization by the majority of society. This view does not rule out the possibility of being directed at military justice which has so far been viewed by society 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

¹¹Abdurrahmat Sathoni, 2005. *Research Methods and Thesis Writing Techniques*, RinekaCipta, Jakarta, p. 98.

¹²Soerjono Soekanto and Sri Mamudji, 1985. *Normative Legal Research: A Brief Review*, CV.

¹³Astri Dewi Setyarini, Irwan Triadi, *Desertion Violations in Military Soldiers*, *Journal of Social Sciences Research*, Vol. 1, No. 5, 2023, p. 55.

relatively light. Viewed from a legal perspective, military members have the same standing as ordinary members of society, meaning that as citizens, all applicable legal rules apply to them, both criminal law, civil law, criminal procedure and civil procedure. The difference is that more specific regulations are still needed which are stricter and more severe for military members, 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 orders from superiors (insubordination), and desertion.

Desertion itself is a very serious act in the military, especially for the Indonesian National Army (TNI). Desertion refers to the act of military members who leave their duties without permission or who do not return to their unit after their term of service ends. This will have an impact on the individual who deserts but also affects the unity, morale, and security of the country. In a legal context, desertion in the TNI is strictly regulated by laws and regulations.

This action is considered a serious violation because it can endanger state security and the integrity of the TNI as an institution that has a great responsibility in maintaining the sovereignty of the nation. In a broader sense, desertion not only reflects individual disobedience, but can also indicate deeper problems within the military institution, such as lack of welfare, moral support, or even the psychological condition of TNI members. One of the factors that TNI members who have the potential to desert often face is high physical and mental pressure during their duties. Tasks related to military operations, assignments in conflict areas, or difficult environmental conditions often make TNI members feel stressed and exhausted. In some cases, TNI members may feel that they have no other choice but to leave their duties to save themselves or seek protection from the situation they are facing. This shows that desertion can be triggered by various factors, both internal and external.

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.

In the legal context, desertion is regulated by various regulations, including the Military Criminal Code (KUHPM) and internal TNI regulations. According to the articles in the KUHPM, desertion is considered a criminal act that can be subject to legal sanctions, either in the form of imprisonment or disciplinary action. This shows how serious desertion is considered in the military legal system in Indonesia and the importance of enforcing existing regulations in order to maintain the discipline and morality of TNI members. In addition, desertion also has a long-term impact on the TNI organization itself. The presence of members who desert can

affect the morale of the remaining troops, disrupt operational stability, and damage public trust in the military institution. In the long term, this can lower the TNI's image in the eyes of the public and create a negative stigma against members on duty. This problem not only tarnishes the individual, but also tarnishes the pride of the corps. As far as we know, the Indonesian National Army (TNI) has always put forward a firm stance to maintain the dignity of soldiers by enforcing the law.¹⁴Therefore, it is important to understand the factors that lead to desertion and find appropriate solutions to prevent such acts in the future.

In the military world, of course, it cannot be separated from loyalty, love of the homeland, defending the country and integrity. These things must be possessed by a member of the army in carrying out daily duties to guard the Indonesian homeland. Guarding the Indonesian homeland in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia. Where in article 27 paragraph 3 and article 30 paragraph 1 contains the meaning that it must be guarded by all Indonesian citizens as a form of defending the country. Which of course must also be done by all members of the Indonesian National Army (TNI) in facing existing threats.¹⁵

An absolute requirement in military life is to obey TNI regulations and official orders from every superior in order to uphold a life in the military that is full of high awareness. If these things are violated, it shows that the military is not good and is not responsible 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.¹⁶No citizen is immune from the law, even if the crime is committed by a civilian or a member of the TNI. The Indonesian National Army (TNI) as a member of the TNI at the forefront of Indonesia, in the eyes of the public is a role model. Therefore, all actions and deeds carried out by TNI members must be in accordance with the rules and avoid reprehensible acts, let alone violating military discipline, the military code of law or general criminal law.

The implementation of punishment against TNI members who desert, requires a special military legal institution that handles cases of TNI members, namely through the military legal system. The military law in question includes Military Justice, which consists of the Military Court, the High Military Court, the Main Military Court, and the Military Court.

¹⁴Sulistiriyanto H, Criminal Liability of TNI Military Members Who Commit the Crime of Desertion, *Perspektif*, Vol. 16, No. 2, 2011, p. 35.

¹⁵Giska Fajari, Nufrwidya Kusma Wardhani, Irwan Triadi, Legal Review of the Criminal Act of Desertion by TNI Members (Case Study of Ajendam XVIII/Kasuari), *Journal of Law, Public Policy, and Government*, Vol. 2, No. 1, 2025, p. 67.

¹⁶Haryo Sulistiriyanto, Criminal Liability of TNI Military Members Who Commit the Crime of Desertion, *Jurnal Perspektif*, Vol. XVI, No. 2, 2011, p. 83.

Military Battle.¹⁷

In particular, desertion is different from general criminal acts, the difference lies in the subject, where military crimes are committed by TNI members as regulated in Article 4 Paragraph 1 of Law No. 34 of 2004. TNI soldiers include the Army, Navy and Air Force, while general crimes,

based on the Criminal Code, can be done by both military and civilians. Desertion, also known as absence without permission, is regulated in Chapter III of the Criminal Code and is usually considered an act that should not occur in military life. Although currently there are still many cases where military personnel leave service without permission for more than 30 days or commit desertion, the uniqueness of the implementation of this law enforcement is that a military person who commits the crime of desertion can still be tried (tried) even though the suspect or defendant is not present at the trial, known as the *In Absentia* trial. In the event of a crime committed by a member of the TNI, the Military Police are required to carry out investigative actions in accordance with the procedures and procedures regulated in the Criminal Procedure Code (KUHAP) and Law No. 31 of 1997. Article 69 of Law No. 31 of 1997. The Investigator's Rights are to:

1) The Anjum Towards his subordinates (Anjum)

2) Military Police (POM)

3) Military Prosecutors in the Military Court environment (Military Oditur) In accordance with the function of the Military Police which is a technical function that directly helps determine the success of ABRI development and in the implementation of Legal, discipline and order operations which are the main requirements in the lives of members of the Indonesian National Army (TNI) which are reflected in their attitudes, behavior, actions and devotion. Therefore, strict and continuous supervision is needed by the Military Police.¹⁸

The legal process for TNI members who desert begins with an internal investigation conducted by the military. This process includes gathering evidence, examining witnesses, and analyzing the accompanying situation. In some cases, if there are certain mitigating factors, such as emergencies, mental stress, or moral conflict, the authorities may consider giving lighter sanctions or even rehabilitation rather than imprisonment. This shows that the military legal system in Indonesia is not only repressive, but also considers humanitarian aspects. It is important to note that the punishment for TNI members who desert does not only include criminal sanctions, but can also result in further disciplinary action. Members who are proven to have deserted can be dismissed from military service,

¹⁷Salam, F, 2006, *Military Criminal Law in Indonesia*, Mandar Maju, Bandung, p. 90.

¹⁸Putra, T. D, *Application of Military Law to TNI Members Who Commit the Crime of Desertion*. *Lex Crimen*, Vol. 2, No. 2, 2013, p. 78.

lose certain rights, and have difficulty getting a job at another institution after serving their sentence. This shows that the consequences of desertion not only have an impact at that time, but can also affect the individual's life in the future. Legal responsibility also includes ethical and moral aspects. TNI members are expected to comply with the military code of ethics and demonstrate attitudes that reflect integrity, discipline, and responsibility. Desertion clearly violates these values, and the public's view of TNI members who desert tends to be negative. This adds to the burden on these individuals, as they face not only legal consequences but also social stigma that can affect their personal and professional lives.

The legal process in cases of desertion by TNI members is strictly regulated and involves several stages. Once a TNI member is known to have deserted, the military unit will conduct an initial investigation to gather information and evidence related to the case. At this stage, the authorities will examine the background of the member concerned, including psychological conditions, health, and possible reasons for the act of desertion. It is important to conduct a thorough analysis to understand the context that led to the act, so that the decision taken can be more fair and appropriate. After the initial investigation, if there is sufficient evidence to support the alleged desertion, the case will be brought to a military court. Here, the trial process will take place by listening to statements from witnesses, related parties, and considering the available evidence. The military judge will be tasked with deciding whether or not the member concerned is guilty of the crime of desertion.

This trial process is expected to provide an opportunity for the accused to defend themselves and state the reasons underlying the act of desertion. During the legal process, TNI members involved in desertion cases are entitled to certain rights, including the right to receive legal defense. The parties concerned can request assistance from a lawyer or legal advisor to accompany them during the trial process. This reflects the principle of justice recognized in the Indonesian legal system, although this legal process continues to take place within a military framework that has its own characteristics and procedures. After the trial process is complete, the military judge will issue a verdict which can be a prison sentence, disciplinary action, or acquittal. In this regard, it is important to emphasize that the decision taken must take into account all the facts and relevant circumstances, as well as the impact of the punishment on individuals and the TNI institution as a whole. A transparent and fair legal process is essential to maintaining public confidence in the military legal system and to prevent human rights violations during the process.

In its implementation, every member of the Indonesian National Army (TNI) must obey every order and provision stated in the applicable laws. Furthermore, if we discuss discipline and military law in the military environment

The Indonesian National Army (TNI), especially regarding the crime of desertion. Desertion is the act of leaving military duty without official permission. Every member of the Indonesian National Army (TNI) is required to submit to and obey the provisions of applicable military law, such as the Civil Code.

Military Criminal Law (KUHPM), Military Disciplinary Code (KUHDM), and Military Disciplinary Regulations (PDM), as well as other regulations. The crime of desertion has been regulated in Article 87 of the Military Criminal Code (KUHPM), desertion is considered an act that can harm the unit, the general public, and the state. In handling criminal acts within the Indonesian National Army (TNI), regulations are needed to achieve integration of the way of acting between officials who are authorized to resolve criminal cases in the Indonesian National Army (TNI), on this basis the TNI Commander Regulation Number: perpang / 4 / IV / 2007 was issued: with the existence of the TNI commander's regulation indicating the officer who submitted the case within the Indonesian National Army (TNI), it shows the importance of the structure and rules for handling criminal cases within the Indonesian National Army (TNI). All of this reflects efforts to maintain discipline, compliance with military law, and handling criminal acts within the military organization to maintain order and order.

Furthermore, regarding the settlement of the crime of desertion that occurs in the realm of the military justice environment, the form of responsibility for desertion is regulated in Article 6 of the Criminal Code in the form of Principal Criminal Code: Imprisonment, this is regulated in Article 6a paragraph 2 of the Criminal Code, the implementation of which for the military is carried out at the Military Correctional Institution (Masmil). Additional Criminal Code: Dismissal from military service, this is regulated in Article 6 b paragraph 1 of the Criminal Code. The imposition of a criminal sentence of dismissal in addition to the principal sentence is considered by military judges to be no longer appropriate to be maintained in the life of the military community and if a criminal sentence of dismissal is not imposed, it is feared that the presence of the convict later in the military after he has served his sentence will shake the foundations of order in society. The basis for the Panel of Judges to impose an additional criminal sentence of dismissal is contained in Article 26 of the Criminal Code, which reads:

Article 26 paragraph 1,

"Dismissal from military service can be imposed by a judge together with every decision to impose a prison sentence on a military person who, based on the crimes committed, is deemed no longer worthy of remaining in military life."

Verse 2

"According to the judge, the dismissal resulted in the loss of all rights obtained by the Armed Forces during his previous service, with the exception that pension

rights would only be lost in cases stated in the pension regulations applicable to convicts."

Verse 3

"If the dismissal is accompanied by the revocation of the right to enter the armed forces, according to the law it also results in the loss of the right to have and wear stars, honorary insignia, medals or insignia, insofar as the latter were obtained in connection with his previous service."

Desertion is a serious problem faced by the Indonesian National Armed Forces, and the legal liability for TNI members who commit this act is strictly regulated by military law. It is important for TNI members to understand the consequences of desertion and to avoid it, so that they can continue to carry out their duties properly. The TNI must continue to strive to create a supportive environment for soldiers, including attention to mental health, social welfare, and effective communication. Only by creating a positive and open atmosphere can the TNI minimize the number of desertions and maintain integrity and discipline in the military environment. Thus, the TNI will be able to carry out its functions and responsibilities as the front guard in maintaining the sovereignty and security of the country.

3.2. Efforts to Resolve the Criminal Act of Desertion Committed by the Indonesian National Army in the III-12 Surabaya Military Court Area

It is certain that the country must always have military power to support and maintain the unity, unity and sovereignty of a country. Like other countries in the world, Indonesia also has military power which is often referred to as the Indonesian National Army (hereinafter abbreviated as TNI). With the development of increasingly advanced environmental conditions and the occurrence of national reforms in Indonesia, the government issued Law of the Republic of Indonesia (hereinafter abbreviated as UU RI) No. 34 of 2004 concerning the TNI with the aim that the duties of the TNI will be more focused. The main task of military law is regulated in Article 64 of Law of the Republic of Indonesia No. 34 of 2004, namely "Military law is fostered and developed by the government for the interests of organizing national defense interests".¹⁹ The crime of desertion is included in the pure military crime section regulated in Article 87 Paragraphs 1, 2, and 3 of the Military Criminal Code. The legal settlement process for the crime of desertion at the III-12 Surabaya Military Court is that the legal settlement process for the crime of desertion can be carried out through several stages. First, there is the stage of receiving files. At this stage, the III-12 Surabaya Military Court receives the transfer of case files from the Oditurat, which is then recorded by the Kataud in the incoming mail agenda and registered in the case register. After the recording is

¹⁹Chinitra Septin Prawesti, Considerations of the Judge of the Surabaya III-12 Military Court in Deciding on the Crime of Desertion During Peacetime, *Verstek Journal*, Vol. 5, No. 1, 2017, p. 78.

made, the Chief Justice studies the files to determine whether the desertion case can be examined in Court, related to the competence of the court. If possible, the Chief Justice will appoint a judge to examine the case through the Judge Appointment Stipulation (Tapkim). However, if the files do not meet the requirements, the Chief Justice will immediately return them to the Oditur with instructions to transfer the case to a more authorized court through the transfer stipulation issued by him.

Second, the judge's preparation stage. After the Chief Justice appoints a panel of judges to handle the case, the panel of judges will immediately study the case files, and the chief judge will set a trial date for the desertion case (Tapsid).

Meanwhile, the chief military prosecutor summons the Defendant and witnesses through a summons letter, which must be delivered a maximum of 3 days before the trial date. The summons is made by sending a letter to the Superior Who Has the Right to Punish (Ankum) and accompanied by a copy to Papera. Third, the examination or trial stage (regular examination procedures).

This stage begins on the day of the trial, which begins with the opening of the trial and the reading of the indictment. In this trial agenda, the identity of the Defendant present will be matched with that stated in the case file, followed by the reading of the indictment by the Prosecutor. The reading of the indictment is carried out clearly, so that the Defendant can understand the contents of the indictment. Furthermore, the trial agenda continues with the reading of the exception or objection by the Defendant in response to the indictment from the Prosecutor. The exception and his/her resistance efforts must be submitted within a maximum of 14 days to ensure whether the III-12 Surabaya Military Court has the competence to handle the case.

The defendant must convey his charges clearly. Therefore, the defendant is required to file an exception if there is an important matter that needs to be questioned.

Then, The trial agenda continued with the examination of witnesses in turns, which was carried out with an escort from the Provost as they entered and exited the courtroom. The first witness to be examined was the witness presented by the Provost. After the examination of witnesses from the Provost was completed, it was continued with the examination of witnesses from the Defendant. Before giving testimony at the trial, each witness was required to be sworn in to provide truthful testimony. The Panel of Judges at the III-12 Surabaya Military Court often reminded that there were sanctions for witnesses who gave false testimony. Furthermore, the examination of the Defendant was carried out. The Defendant was accompanied by the Provost when entering and leaving the room, and during the trial, they had to be polite and respectful

The perpetrator of the act of desertion itself can be subject to criminal sanctions according to the time of the desertion that the perpetrator committed. For example, if the perpetrator is a member of the TNI leaving the unit for a long time, the punishment given will be heavier, and if the perpetrator is a member of the TNI leaving the unit only for a short time, the punishment given will be lighter. And if the desertion is carried out during peacetime, the perpetrator who is a member of the TNI can be subject to a maximum prison sentence of 2 years and 8 months. As for desertion carried out during wartime, the criminal penalty for desertion can be subject to a maximum prison sentence of 8 years and 6 months. The stages of its resolution begin with the investigation stage, but the investigation into the crime of desertion is slightly different from other military crimes. In the crime of desertion, the authority to state that a member of his unit is suspected of having committed desertion is the Ankom from the unit of the perpetrator of the desertion, because the perpetrator was initially declared to have committed desertion if he deliberately did not enter service without permission which was carried out during peacetime, namely more than 30 days where the evidence and evidence came from his own unit. So the first party authorized to search for the perpetrator when the perpetrator is suspected of committing a crime of desertion is the perpetrator's unit, in this case the Dansat (Unit Commander) to order officers and their members to complete administrative requirements, make a Wanted List (DPO) and issue a warrant to search for the perpetrator of the desertion. If the unit has made the efforts ordered by the Dansat, then it can be delegated to the Military Police Investigator of the IM Military Command. Even though the Defendant is not found, various efforts are still made to find the Defendant by the unit, namely by contacting the Defendant via telephone number or cellphone number, short messages and all the defendant's social media, then the Defendant's unit also tries to find the Defendant at the Defendant's parents' house. The efforts made by the IM Military Police Investigator to find the Defendant in a way that is not much different from the efforts made by the unit, namely by searching for the Defendant in his hometown and the Defendant's parents' house. The thing that differentiates the efforts made by the unit and the efforts made by the POMDAM IM Investigators in finding the Defendant is that the POMDAM IM Investigators also contacted the POMDAM whose jurisdiction is in the Defendant's hometown.

The high number of desertion cases certainly needs to be addressed by carrying out optimal law enforcement, in addition to the fact that there are several desertion cases in the III-12 Surabaya Military Court from year to year. So that the law enforcement process against desertion itself in the Military Court basically refers to formal military law, namely Law No. 31 of 1997 concerning Military Justice. The law enforcement process based on the Military Justice Law itself is not much different from the law enforcement process based on the Criminal Procedure Code (Criminal Procedure Code). The difference is in the environment of different law enforcement officers, military law enforcement by military

officers, while the law enforcement of the Criminal Procedure Code by civilian officers, the Criminal Procedure Code regulates the initial law enforcement process in the form of an investigation stage, while the Military Justice Law regulates the authority of the *papera* (Case Submitting Officer) which can determine the steps to resolve the case after the investigation stage, while the Criminal Procedure Code does not regulate this matter.

The legal settlement process for the crime of desertion at the III-12 Surabaya Military Court can be carried out through several stages. First, there is the stage of receiving files. At this stage, the III-12 Surabaya Military Court receives the transfer of case files from the *Oditurat*, which is then recorded by the *Kataud* in the incoming mail agenda and registered in the case register. After the recording is done, the Chief Justice studies the files to determine whether the desertion case can be examined in the Court, related to the competence of the court. If possible, the Chief Justice will appoint a judge to examine the case through the Judge Appointment Stipulation (*Tapkim*). However, if the files do not meet the requirements, the Chief Justice will immediately return them to the *Oditur* with instructions to transfer the case to a more authorized court through the delegation stipulation issued by him. Second, the judge preparation stage. After the Chief Justice appoints a panel of judges to handle the case, the panel of judges immediately studies the case files, and the chief judge will set a trial date for the desertion case (*Tapsid*).

Meanwhile, the chief military prosecutor summons the Defendant and witnesses through a summons letter, which must be delivered a maximum of 3 days before the trial date. The summons is carried out by sending a letter to the Superior Who Has the Right to Punish (*Ankum*) and accompanied by a copy to *Papera*. Third, the examination or trial stage (regular examination procedures). This stage begins on the trial day, which begins with the opening of the trial and the reading of the indictment. In this trial agenda, the identity of the Defendant who is present will be matched with that stated in the case file, followed by the reading of the indictment by the Prosecutor. The reading of the indictment is carried out clearly, so that the Defendant can understand the contents of the indictment. Furthermore, the trial agenda continues with the reading of the exception or objection by the Defendant in response to the indictment from the Prosecutor.

Exceptions and countermeasures must be filed within a maximum of 14 days to ensure that the Surabaya III-12 Military Court has the competence to handle the case. This is also the Defendant's right for his charges to be conveyed clearly. Therefore, the Defendant is required to file an exception if there are important matters that need to be questioned. After that, the trial agenda continued with the examination of witnesses in turns, which was carried out with an escort from the Provost when they entered and left the courtroom. The first witness to be examined was the witness presented by the Provost. After the examination of witnesses from the Provost was completed, it was continued with the examination

of witnesses from the Defendant. Before giving testimony at the trial, each witness was required to be sworn in to provide truthful testimony. The Panel of Judges at the Surabaya III12 Military Court often reminded that there were sanctions for witnesses who gave false testimony. Furthermore, the examination of the Defendant was carried out. The Defendant was accompanied by the Provost when entering and leaving the room, and during the trial, they had to be polite and respectful. The defendant was not sworn in when giving his statement because of the principle of non-self-incrimination as regulated in Article 165 Paragraph 1 of the Military Justice Law, namely the defendant's right not to provide information that could incriminate him.

After the examination of the Defendant, the trial agenda continues with the examination of evidence. Evidence at the III12 Surabaya Military Court must be goods confiscated directly from the Defendant. The evidence must be based on the Confiscation Report if there is no report, then the evidence is considered non-existent. This also applies if the number or type of evidence listed in the report is reduced. The evidence presented at the trial will be shown by the Panel of Judges to the defendant to ensure its relevance to the desertion case being examined. Furthermore, the trial agenda continues with the reading of the criminal charges and defense (plea). The reading of the criminal charges is carried out by the Prosecutor, while the defense is submitted by the Defendant after the charges have been read. The Prosecutor can then provide a response (reply) to the defense, and the Defendant can also respond to the Prosecutor's response (duplicative). After a series of processes in the courtroom are complete, the judges then hold a closed deliberation. This deliberation is carried out to make a decision on the desertion case being handled. In the deliberation, the youngest member judge in his rank provides views, opinions, and suggestions first, followed by other member judges, while the chief judge provides views, opinions, and suggestions last. The results of the decision-making in the judges' deliberation are then recorded in the Decision Collection Book. Furthermore, the final trial agenda for desertion cases is carried out by reading the court's decision. In the III-12 Surabaya Military Court, for desertion cases, there are two types of decisions issued, namely a criminal decision (which states that it is legally and convincingly proven to have committed desertion) and an acquittal (which states that it is not legally and convincingly proven to have committed desertion). Every decision issued by the Court regarding the desertion case will be sent to the Dansat, Papera, Investigators, and Military Auditors on the same day as the decision is read, for the sake of transparency and legal certainty for the parties concerned.

That the reason for committing the crime of desertion in the III-12 Surabaya Military Court is generally more due to economic difficulties, family problems, or being involved in debts, which causes a TNI soldier to leave the service and be afraid to return. For soldiers who commit the crime of desertion and do not return to serve in their unit, the trial process will be carried out "In Absentia" meaning a trial process that is not attended by the soldier because his whereabouts are not

found and with the culmination of the dismissal decision without the presence of the soldier.²⁰

In the legal system in Indonesia, the enforcement of discipline and obedience in the military environment has a high level of urgency. This is inseparable from the nature of the military institution which requires strong discipline and integrity to maintain its functions and duties in defending the country. One of the serious violations that can occur in this context is desertion, which is the act of leaving duty or service without permission. In the case of the Defendant with the initials BSA NRP 1722110010013948 with Decision Number 148-K/PM.III12/AD/XI/2023 stating that, legally and convincingly proven guilty of committing the crime of "Desertion in peacetime." That the Defendant from July 19, 2023 to July 28, 2023, or at least at a certain time in July to August 2023, was located in the unit

Denpal Divif 2 Kostrad in Malang, which is included in the jurisdiction of the III-12 Surabaya Military Court, which has the authority to examine and try this case, has committed the crime: "Military, who due to his fault or intentionally is absent without permission during peacetime for more than thirty days". The defendant served in the Denpal Divif 2 Kostrad unit in Malang, which is included in the jurisdiction of the III-12 Surabaya Military Court, which has the authority to examine and try this case.

Military Court III-12 Surabaya, Defendant BAS is an Indonesian Army soldier who at the time of committing the act that is the subject of this case, the Defendant was still on active duty at Denpal Divif 2 Kostrad Malang with the rank of Prada. In fact, the Defendant had left the unit for 41 days without valid permission from Dandepal Divif 2 Kostrad Malang or other authorized superiors on July 19, 2023 which at the time of the incident was known by Sergeant Suliswanto as Witness-1 and Sergeant Pranika Candra Kumbara as Witness-2. In the investigation of the cause of the Defendant leaving the unit without valid permission from the authorized superior because the Defendant was not disciplined in carrying out daily duties at the Denpal Divif 2 Kostrad Unit, during the investigation and search the unit did not know what the defendant's activities were until one day the unit contacted the Defendant's parents, but the Defendant's whereabouts were not found, the Defendant left the unit when the Unitary State of the Republic of Indonesia was in a state of peace and the Defendant and the Defendant's Unit were not being prepared to carry out military operations. And, that based on the facts of the Defendant's actions, it has fulfilled the elements of the crime of desertion, proven legally and convincingly guilty of committing the crime of desertion during a time of peace as regulated and threatened with punishment according to Article 87 Paragraph 1 to 2 in conjunction with Paragraph 2 of the Criminal Code. That in this case, Decision Number 148-K/PM.III12/AD/XI/2023

²⁰ Hendrik, J, Handling the crime of desertion against Indonesian Navy soldiers. *UNES Journal of Swara Justisia*, Vol. 3, No. 1, 2019, p. 78.

states that in the decision the defendant.²¹Sentenced the Defendant to a Principal Criminal Sentence of 1 year in Prison and an Additional Criminal Sentence of Dismissal from Military Service. And Charged the Defendant with court costs amounting to Rp7,500.00 (seven thousand five hundred rupiah).

With the issuance of the verdict from the Military Court III-12 Surabaya, the defendant was sanctioned in the form of a principal sentence of 1 year imprisonment and an additional sentence in the form of being dismissed from military service. And charged the defendant with court costs of Rp. 7,500.00.-

The defendant's behavior in the verdict clearly violated the morals, role, function, and main duties of the Indonesian National Army, which should prioritize national interests and the interests of the nation above all regional, ethnic, racial, and religious interests. As stated in Law No. 34 of 2004 concerning the Indonesian National Army. The legal process has fulfilled the elements of the theory of legal certainty. The theory of legal certainty has four basic things that have a close relationship with the meaning of legal certainty itself, namely as follows:

- 1) Law is a positive thing, which means that positive law is legislation.
- 2) Law is based on a fact, meaning that the law is made based on reality.
- 3) Facts contained or stated in the law must be formulated in a clear manner, so as to avoid errors in meaning or interpretation and can be easily implemented.
- 4) Positive law must not be easily changed.

The defendant has fulfilled the four basic things in the theory of legal certainty. Therefore, it is only right that the defendant be punished according to the applicable provisions. The defendant's behavior has also fulfilled the elements of the theory of legal responsibility stating that a person is legally responsible for a certain act or that he bears legal responsibility, the defendant is responsible for sanctions in the case of contradictory acts. is the concept of legal responsibility (liability). The defendant is legally responsible for the crime of desertion which is clearly contrary to the applicable laws and regulations, in this case the defendant fulfills the elements of the theory of individual responsibility, namely an individual is responsible for the violations he himself committed, which are related to morals and laws that are already mixed (intermingling).

It is different again in Decision Number 149-K/PM.III-12/AD/XI/2023, which in the case involved the initials RH as the defendant in the III-12 Surabaya Military Court, with a modus operandi/motive.²²That the Defendant from May 16, 2023 to

²¹Decision of Dilmil III-12 Surabaya 148-K/PM.III-12/AD/XI/2023.

²²Dilmil Decision 149-K/PM.III-12/AD/XI/2023

September 26, 2023, was at Yonif Para Raider 502/UY/18/2 Kostrad Malang, East Java, which is included in the jurisdiction of the III-12 Surabaya Military Court, which has the authority to examine and try this case, has committed a crime, with the fact that the Defendant has become a soldier.

TNI AD in 2009 through Secatam PK education at Rindam IV/Diponegoro and graduated and was inaugurated with the rank of Prada, then placed in Yonif Para Raider 502/UY/18/2/Kostrad Malang until committing the act that became this case with the rank of Kopda NRP 31090458760889. That the Defendant left the unit without valid permission from Danyonif Para Raider 502/UY/18/2 Kostrad or other authorized superiors on May 16, 2023 to September 26, 2023. In the search for information that the reason the Defendant left the unit without valid permission from the unit commander, because the Defendant was frustrated in returning Mr. AW's money amounting to Rp. 230,000,000.00 (two hundred and thirty million rupiah) to help Mr. AW entered the TNI AD Pa PK in 2020 and the money to Kopda H amounting to Rp. 17,000,000.00 (seventeen million rupiah) for the Secabareg entrance exam which the Defendant has spent.

While the Defendant left the unit without valid permission from the unit commander, the Defendant was at the house of the Defendant's aunt, Ms. E in Parung Halang Village, Andir District, Bandung City, working as a guard for Mr. S's land plot. When the Defendant was not in the unit, the unit had tried to search for the Defendant in the Malang City area and around Singosari, and contacted the Defendant's parents, but the Defendant was not found. Various efforts were made by the unit and in collaboration with various parties until finally they yielded results. The Defendant was arrested on September 23, 2023 by members of the Baleendah City Police.

Bandung when breaking up a dispute between Mr. I and Mr. U, residents of Parung Halang Village, Bandung City, then the Defendant was handed over to Denpom III/5-1 Cimahi, then on September 26, 2023 the Defendant was picked up by the Intelligence Officer of Yonif Para Raider 502/UY, Lieutenant Inf. A along with 2 (two) Provosts and transferred to Denpom V/3 Malang. That with these facts the Defendant has left the Yonif unit

Raiders 502/UY/18/2 Kostrad Malang without valid permission from the Commander of Raiders 502/UY/18/2 Kostrad or other authorized superiors from May 16, 2023 to September 26, 2023 or 133 consecutive days. As long as the Defendant leaves the unit without permission, the Unitary State of the Republic of Indonesia is in a peaceful state and the Defendant and the Defendant's Unit are not being prepared to carry out military operations. And it should be noted that before this case went to trial, the Defendant RH had committed a criminal act of desertion in 2021 and had been decided by the III-12 Surabaya Military Court with decision number 121-K/PM.III12/AD/VII/2021 dated August 24, 2021 with a prison sentence of 5 months. With the existing facts, the Defendant has fulfilled the

elements of a criminal act as formulated and is threatened with the punishment stated in Article 87 paragraph 1 to 2 in conjunction with paragraph 2 of the Criminal Code in conjunction with Article 88 paragraph 1 to 1 of the Criminal Code. With these charges, the Defendant in the case in the III-12 Surabaya Military Court. In Decision Number 149-K / PM.III12 / AD / XI / 2023, stated that the Defendant RH, Kopda NRP 31090458760889, was proven legally and convincingly guilty of committing the crime of "Repeated Desertion." was tried with a principal sentence of 7 (seven) months in prison. Determined that the Defendant's time in temporary detention was deducted entirely from the sentence imposed and the Additional Penalty of Dismissal from Military Service and Charged the Defendant with court costs of IDR 7,500.00.-

The verdict stated that the Defendant RH had legally committed the crime of desertion with a principal criminal penalty of 7 (seven) months in prison. The Defendant was determined as a temporary detainee while the Defendant was in temporary detention and was reduced in full from the sentence imposed and an additional criminal sanction in the form of being dismissed from military service.

In the case involving the defendant RH as the defendant, it is included in the variable of the theory of legal certainty, where legal certainty has two meanings. First, the existence of a general unit makes individuals know what actions should not be done. Second, in the form of legal security for individuals and government arbitrariness because with the existence of a general unit, individuals can know what the State may charge or do to individuals.

In this case, the defendant RH, who at that time had the status of a TNI AD soldier, should have known that the actions he committed were prohibited by the unit. Then, in this case, the defendant has also been like what Hans Kelsen said about the theory of responsibility, including individual responsibility, namely an individual is responsible for the violations he himself committed. Then the defendant has also entered into the variable theory of responsibility by Abdulkadir Muhammad, namely the theory of responsibility due to unlawful acts committed due to negligence (negligence tort liability), based on the concept of fault (concept of fault) which is related to morals and laws that have been mixed up (intermingled).

Then in the case involving Defendant AA from the AD unit as a defendant in the area of the III-12 Surabaya Military Court. In the Decision of the III-12 Surabaya Military Court 150-K / PM.III12 / AD / XI / 2023 in the case involved Defendant AA with the Charge of the Crime of Desertion.²³That from August 2, 2023 to September 8, 2023, or at least at some time in August 2023, located at Termbekang-2 Pusbekangad in Surabaya, which is included in the jurisdiction of the III-12 Surabaya Military Court. The defendant entered the Indonesian Army in

²³Decision of Dilmil III-12 Surabaya 150-K/PM.III-12/AD/XI/2023

2017 through Secata PK education at Kodam XVII/Cendrawasih, after graduating he was inaugurated with the rank of Prada and placed in Termbekang-2 Pusbekangad until he committed desertion with the rank of Pratu NRP 31170421210496. The defendant left the Unit without valid permission from the Head of Termbekang-2 Pusbekangad or other authorized superiors from August 2, 2023 to September 8, 2023, and the defendant's actions were known to Captain Cba ASB Witness-1, PA Witness-2 and STN Witness-3 through the Termbekang-2 Pusbekangad Dock Team picket attendance. At that time, the Defendant left the Unit without permission from another authorized superior, in addition, the Defendant never informed his whereabouts either by letter or telephone and the Unit had made efforts to search for him at the Papuan representative dormitory, Surabaya City, Gresik and Sidoarjo, but the results were nil. The Unit did not know the basis for the Defendant leaving the Unit without valid permission from the Dansat or other authorized superiors. Thus, the Defendant had left the Unit without valid permission from the Unit Commander from August 2, 2023 to September 8, 2023 or for 37 consecutive days. It should also be noted that in 2020 the Defendant was sentenced to 2 months and 20 days in prison for committing the crime of desertion in accordance with the decision of the Military Court III-12 Decision Number 38-K / PM.III-12 / AD / III / 2021 dated March 9, 2021 and now the Defendant is repeating the same military crime. The defendant has fulfilled the elements of a criminal act and is threatened with the provisions of Article 87 paragraph 1 Ke 2 Jo paragraph 2 Jo Article 88 paragraph 1 Ke-1 of the Military Criminal Code. The defendant AA Private NRP 31170421210496, was proven legally and convincingly guilty of committing the crime: "Desertion in peacetime with aggravation" with the main criminal sanction of imprisonment for 1 (one) year and an additional penalty of dismissal from military service.

In this case involving Defendant AA, he previously committed the crime of desertion in 2020 and now AA has committed the crime of desertion for the second time. The theory of legal certainty is included in this variable, the existence of a general unit makes individuals know what actions are allowed or not allowed. In this case, AA as the Defendant in this case already knows that desertion is an act that is prohibited in the military and is a serious crime. Then the theory of responsibility is included in this variable. Individual responsibility, namely an individual is responsible for the violations he himself committed.

In the three Decisions, there are various modus operandi/motives and because of the different backgrounds of the problems. This can be an evaluation material for the Dandim, Korem, Panglima TNI to pay more attention to the welfare of the soldiers who have dedicated their souls and bodies to the Indonesian nation.

4. Conclusion

The legal responsibility for TNI soldiers who desert is comprehensively regulated in the Indonesian military legal system. The legal basis includes the Military

Criminal Code (KUHPM), especially Article 87 which criminalizes desertion, as well as TNI internal regulations. The legal process begins with an internal investigation by the relevant unit, followed by an investigation by the Military Police (POM) and prosecution by the Military Auditor before being tried in a Military Court. The military court can impose criminal sanctions in the form of imprisonment in the Military Correctional Institution (LPM) and additional sanctions in the form of dismissal from military service, in accordance with Article 6 of the KUHPM and Article 26 of the KUHPM. This dismissal results in the loss of rights obtained during service, except for retirement in certain cases. The trial process can be carried out in absentia if the accused is not present. These sanctions aim to enforce discipline and maintain the integrity of the TNI, but also take into account mitigating factors such as mental stress or emergencies. Desertion has a negative impact on the morale of the unit, the operational stability of the TNI, and the image of the TNI in the eyes of the public. Therefore, the TNI needs to make efforts to prevent desertion by improving soldier welfare, psychological support, and effective communication to create a supportive work environment.

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