



Reformulation of Criminal Law Policy in the Process of Resolving Desertion Cases for Indonesia National Military that Gets Justice

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Abstract. Law of the Republic of Indonesia Number 34 of 2004 explains that the Army is a citizen who is prepared and armed for the tasks of national defense to face military threats and armed threats, but in terms of law enforcement as The military's legal object is obliged to comply with the applicable law in the Unitary State of the Republic of Indonesia, both contained in the Criminal Code (KUHP) and in the Military Criminal Code (KUHPM), in article 46 of the KUHPM it is stated that the military are those who are legally bound by service. Voluntarily in the Armed Forces, who are obliged to be in service continuously within the grace period of the service bond, Until now this action is still often carried out by soldiers of the Indonesian National Army and cause a lot of losses for the Unity and the Unitary State of the Republic of Indonesia and become a form of crime is desertion or absenteeism without permission from the competent superior be a criminal act where the action is an act that cannot be happened in military life. However, considering that for the military the act is is an act that cannot happen, then the solution or action legally military discipline cannot provide a deterrent effect and provide an example for other TNI members. To reduce this problem, a normative legal approach is used, the data sources used in this study are secondary data and primary data. The results obtained are that a series of processes for the settlement of criminal acts of withdrawal from service obligations (desertion) must be based on the law and through law enforcement officers that have been stipulated by law and must be more effective in carrying out their duties as law enforcers, especially in settlement of criminal acts of withdrawal from service obligations (desertion). Therefore the act is determined as a form of crime and is punishable by criminal penalties imprisonment to dismissal from military service. Unity was greatly harmed because The army cannot carry out its duties as a military, but on the other hand it is necessary also received attention from external factors of the perpetrator, namely the perpetrator's family who in their daily life rely on the perpetrator's salary to meet the needs of life, by being given the opportunity as stated in Law Number 31 of 1997 Article 143, namely the case of the criminal act of desertion as referred to in the KUHPM which The defendant fled and was not found again within 6 (six) months consecutively and has attempted to summon 3 (three) times in a row legal, the court's decision will only be implemented, but with a certain period of time enforced in the law makes the desertion case a serious case classified as difficult because it takes a long time to complete, use speed up the settlement of desertion cases, reformulate the criminal rules the crime of desertion with a shorter period of time by issuing The Circular Letter of the Supreme Court

was extended for 5 (five) months with the time remaining fixed it just hasn't provided a solution in accelerating the settlement of the desertion case so that reappears a shorter completion time of 1 (one) month with a fixed summoned 3 (three) times, in terms of the effectiveness of law enforcement officers this can be achieved, but what about justice for the perpetrators and the parties? others outside the service, with their status as TNI, their rights as the TNI, especially salaries can still be automatically given to these members although it is not accepted by the person concerned, but the family or heirs the perpetrators of the desertion can still receive a salary or entitlement as a military officer and can still used for his family in meeting the necessities of life, A member of the TNI In this case, attention also needs to be paid while prioritizing humanity fair and civilized.

Keywords: Military · desertion · justice

1 Introduction

As a country based on law, the Indonesian state must follow three fundamental principles which of course must be respected, obeyed and upheld by every citizen or the rule of law. The three fundamental principles are equality of every citizen before the law (*equality before the law or the rule of law*), law enforcement must be carried out in ways that do not conflict with legal norms [1] and social justice for all Indonesian people, part of Indonesian citizens including the Army, In the Law of the Republic of Indonesia Number 34 of 2004 it is explained that the Army is a citizen who is prepared and armed for the tasks of national defense in order to face military and military threats armed threat [2].

Soldiers are the subject as well as the target object of the application of the rules that have been regulated by the law that applies to the Army. As a consequence of the TNI as an object of military criminal law and general criminal law, it is obliged to submit and obey, respect and uphold the legal values that apply in society, especially in the military environment. In its position, the Army as the legal object of the TNI is obliged to comply with the applicable laws in the Unitary State of the Republic of Indonesia, both contained in the Criminal Code (KUHP) and in the Military Criminal Code (KUHPM). Who are bound voluntarily to the Armed Forces, who are obliged to be in service continuously within the grace period of the service bond. Along with the development of the era Role, function, The duties and responsibilities of the TNI have also changed. There are changes, of course must also be accompanied by changes to the rules and regulations that apply to the TNI Various reforms of the rules and laws related to the TNI can be used as a basis in realizing the national goal of protecting the entire nation and the whole spilled Indonesian blood, advancing public welfare, educating the nation's life and participating in and carry out world order based on freedom, eternal peace and social justice. The Indonesian National Army in realizing national goals has become a tool for the Republic of Indonesia in the field of defense which in carrying out its duties based on applicable laws and regulations and state political decisions.

The main task of the Indonesian National Armed Forces is to uphold the sovereignty of the state, maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia,

and protect the entire nation and the entire homeland of Indonesia from threats and disturbances to the integrity of the nation and state. The main tasks are divided into 2 (two) namely military operations for war and military operations other than war [1]. With the size of the main task that must be carried out by the TNI then every member of the Indonesian National Army should (TNI) in addition to being instilled in disciplined attitudes, they must also be submissive and obedient to the legal provisions that apply to the military contained in the rules military service or Military Disciplinary Regulations (PDM) as well as other laws, namely: Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI), Kitab Military Criminal Law (KUHPM), Disciplinary Law Military (KUHDHDM), and other applicable regulations.

With the various rules that have been set, it should be able to make the TNI permanent become a highly disciplined soldier, and obey the applicable rules so that violations and criminal acts can be reduced every year, some Violations and criminal acts are indeed in line with the development of regulations decline but in this case there is a form of offense which for the Army becomes a forms of criminal acts, along with the development of regulations, it continues to increase in every every year, these crimes have a good impact on the national goals of the Republic of Indonesia, military units and the environment and is still often done by soldiers of the National Army Indonesia and causing a lot of losses to the Unity and the Unitary State of the Republic of Indonesia is desertion or desertion Absence without permission from the competent supervisor. The act of leaving Unity without the permission or knowledge of superiors is an act that should not occur inside military life, but considering that for the military the act is an act that cannot happen, the action will be carried out through military discipline law which provide sanctions in the form of a postponement of rank and a ban on attending education within a period of time certain time, but the disciplinary punishment given does not provide a deterrent effect. So that acts are determined as a form of crime and are threatened with criminal penalties imprisonment for a maximum of eight months up to dismissal from military service. Changes in Deseri's sentencing process in military criminal law to date have only tends to accelerate the settlement of the case and has not led to the justice which is the main goal of the law itself. For now, the rules apply latest for desertion is regulated in SEMA Number 5 of 2021 dated December 28, 2021.

With a dismissal period of only 1 (one month) search without considering other important matters, of course, have not led to justice for all Indonesian people. The application of the 1 (one) month period is very different from the provisions stipulated in there is in Law Number 31 of 1997 Article 143 over time then changes to the original time of 6 months, the changes that occur are a manifestation of the renewal of the rules along with the development of the times, where if you still use 6 (six) months of time, the desertion case becomes a case category. Which is difficult to solve. Due to the absence of the crime of desertion, the number continues to increase every year, the rules that apply are routinely changed due to delays settlement of the case at the first court level. The increase in the crime of desertion that occurs every year when compared to other cases, due to time settlements contained in Law Number 31 of 1997 concerning Courts The military period for the settlement of the case is Article 143 which reads "Case" the crime of desertion as referred to in the Criminal Procedure Code in which the Defendant escapes self and has not been found again within 6 (six) consecutive months and has

attempted summons 3 (three) times in a row legally proven by a summons that has been sent to the perpetrator, but my perpetrator is still not present at trial without a reason and its whereabouts cannot be known or found, then it can be examined and decided without the presence of the Defendant [3]. With a period of 6 (six) month.

The crime of desertion is often committed by members of the Indonesian National Armed Forces, even though it has been threatened with strict sanctions up to dismissal from military service but the punishment given has not provided a deterrent effect and the time for completion still not adjusted to the number of events that occurred and the elements of settlement the case, so that it has not led to a reduction in these crimes and an acceleration solving the case. Given that this crime has a very significant impact on the, the discipline of members of the TNI and the performance of the unit and the environment, even for the nation and The state then needs to emphasize and clarify the form and timing of the imposition of sanctions punishment for the sake of upholding the law and achieving the effectiveness of the settlement time, the role of law enforcement officers within the Indonesian National Armed Forces include the Denpom, Oditur Military, Papera (Case submitting officer) and military judges in law enforcement for The crime of desertion for members of the Indonesian National Armed Forces (TNI) does not only extend to only accelerate the completion, but it is necessary to take preventive and.

More thorough handling, both regarding the causes and the evidence filed for the crime and the impact of the settlement of the case. Speeds up the search time and streamlines case resolution time with the issuance of rules in the form of SEMA Number 5 of 2021 on December 28, 2021 into 1 (one) month the completion will be beneficial for those who handle the process the desertion case, especially for law enforcement officers, but what about Other justice seekers include the perpetrators of the desertion crime who within a period of time brief with the inclusion of 2 (two) pieces of evidence in the form of a list of absences and witness statements, without there is information on the extent to which the search has been carried out or attempted and without If a witness is present from the family, dismissal from the TNI service can be carried out. What about his services while serving as a TNI soldier and the livelihood of the parties? family, does that mean the principle of justice for all Indonesian people has been fulfilled? achieved and fulfilled. Can it be said to be fair if within 1 (one) month with For years the services that have been given by a member of the TNI are immediately forgotten by being fired from military service which of course will all continue with the disappearance rights as members of the TNI, both in terms of salary and other welfare, in the same time very fast and much different from the provisions in the sentencing purposes.

2 Findings and Discussion

- a. The application of the time of punishment for the crime of desertion is only oriented to acceleration of case settlement for law enforcement officers.

In the crime of desertion, the perpetrator is definitely a member of the TNI who is still active duty which of course in general does not only have responsibilities to the Unity but also to his family or environment outside the Unity. Impact from the crime of desertion itself is not only limited to the Unitary party who is harmed because the

perpetrators cannot carry out their duties as members of the TNI, but on the other hand It is also necessary to get attention from the perpetrator's family where in their daily life, TNI (Soldier) who are still active will use their salary to fulfill their income the needs of his life and his family, the salary he gets to meet his daily needs, of course, relies on the income of the deserter, given the opportunity which as stated in Law Number 31 of 1997 Article 143 , namely Cases of the crime of desertion as referred to in the KUHPM where the Defendant fled and has not been found again within 6 (six) consecutive months and has been attempted summons 3 (three) times in a row legally, but is not present at the trial without reasons, an examination can be carried out and a decision can be made without the presence of the Defendant, so that in Within 6 (months) the family still gets the opportunity up to their rights as a member of the TNI is no longer given or given sanctions in the form of dismissal. From the corner The view of the perpetrator as a member of the TNI who is still active, of course, also needs to be given opportunity and appreciation for his services while serving as a TNI soldier.

Within the period of settlement of the crime of desertion contained in the Act Number 31 of 1997 is a member of the TNI who committed desertion within a period of 6 months indirectly still get the right as a member of the TNI because there is no decision yet court with permanent legal force, in the event that members of the TNI are also required to behave well to the service and outside the service, so if the TNI member who desertion, of course, before getting a court decision, still have status as the TNI and there is still an obligation to behave well, even though on an official basis this behavior can no longer be reflected but outside of service with his status as still TNI, their rights as TNI, especially salaries, can still be automatically given to the TNI Although the member is not accepted by the person concerned, the family or the heirs of the deserter can still receive a salary or rights as a TNI and can still be used for their families in fulfilling their daily needs, because It is also necessary to pay attention when a TNI member commits a desertion, of course, have given service to the Unity and need to be considered in decide their rights when the member commits the crime of desertion.

Vulnerable time It has been determined that the law is a separate obstacle for law enforcement officials where easy things will become difficult things by looking at the completion time have to wait for 6 (six) months so that the desertion case is delayed the solution and pile up the matter. Basically, criminal punishment is divided into three theories, namely:

1. Theory of Retribution (revenge): aims solely for retaliation as well as aims not to correct, educate or re-socialize the offender [4]. This theory puts forward that sanctions in criminal law are imposed simply because people have committed a crime which is the result absolute that must exist as a retaliation to the person who did crime so that Sanski aims to satisfy the demands of justice [5].
2. Utilitarian theory (Purpose): punishment is aimed at prevention, prevention not be the final goal but only as a means to achieve the desired goal higher i.e. human welfare, the element of retaliation is unacceptable if it cannot help prevent crime for the benefit of community welfare [6].
3. This combined theory seeks to satisfy all adherents of the theory of retaliation as well as purpose, in addition to imposing sanctions against criminals, it is also followed

by providing coaching so that after serving the sentence they do not commit another crime [7].

Criminal sanctions in general are as a means of coercion so that someone obeys the norms that apply, especially in this case the norms that apply in the environment TNI, where each applicable norm has its own sanctions and the ultimate goal expected is a coaching effort [8]. When viewed in terms of the purpose of punishment is not as an attempt to revenge but as an effort to foster criminals as well as preventive efforts against criminals occurrence of similar crimes. The purposes of punishment according to Wirjono Prodjodikoro are:

- a. To scare people, don't do good crimes scare people (general preventive) or scare certain people who have committed crimes so that in the future they will not commit crimes again (special preventive);
- b. To educate or correct people who commit crimes so that become people of good character so that they are beneficial to society [9].
- c. To make certain criminals incapable of doing other crimes, namely criminals who by other means have can no longer be repaired [10].

The perpetrators of the crime of desertion are active TNI soldiers who certainly have abilities and expertise in both the military and other general skills, considering that in the process of acceptance, it passes through the selection stages, both physical and personality as well as other capabilities that can support performance after becoming a TNI soldier, in the process The formation of TNI soldiers has also been provided with provisions and education that can make someone has more abilities and skills than civil society. So that with the provision of Sanctions up to dismissal in very different periods of time From the provisions of the law, it has not reached various good things, namely benefits punishment as well as the purpose of sentencing and the impact of sentencing up to dismissal of TNI soldiers who already have provisions in the military field.

By only being guided by the goal of accelerating the settlement of cases, then the purpose of punishing the crime of desertion has not been achieved, it has been proven until Currently, the number of cases of desertion continues to increase, so it has not been able to provide a deterrent effect for both the perpetrators and the environment of the perpetrators or other TNI soldiers. The crime of desertion is considered a difficult case when viewed from the time of imposition sanctions are in accordance with Law Number 31 of 1997 Article 143 over time and then the time was changed from 6 months later to 5 (five) months and for the last one to 1 (one) month with the issuance of SEMA Number 5 of 2021 on December 28, 2021 from In terms of accelerating the settlement of cases, it has been achieved, but what about the purpose of sentencing and terms of justice for the perpetrators. The imposition of sanctions in the form of imprisonment for a maximum of 2 (two) years and additional punishment in the form of dismissal can be imposed only by submitting 2 (two) pieces of evidence in the form of an attendance list and also witness statements from the unit. By procedural law, there are 2 (two) kinds of evidence It is sufficient for a defendant to be subject to criminal sanctions for a criminal case, but with the two pieces of evidence, is it enough convincing for law enforcement officials to impose witnesses up to dismissal.

The crime of desertion in the law is explained that it is an attempt by a member of the TNI to withdraw from service obligations in various ways without permission from the competent superior or without being known by the Unit, so that it can harm various parties, especially the Unity of the perpetrators because their energy is used. To carry out or carry out duties as members of the TNI, if the TNI member leaves the unit without a clear purpose and without permission, his skills cannot be used for official service, because before officially becoming a member of the TNI, all those who have been declared candidates for TNI members will be provided with provisions.

In the form of fighting skills and other skills according to their abilities, the abilities and expertise of a member of the TNI can be seen from the various vocational and member corps. With the ability and provision of education that has been given, in giving sanctions up to dismissal, it should be considered with expertise and services that have been owned, as well as a form of a sense of justice as well as a basis for consideration to avoid losses in the field of personnel. The imposition of witnesses and categories of crimes against the crime of desertion within the Indonesian National Armed Forces (TNI) has been regulated in Law No. 31 of 1997 concerning Military Justice and the Military Criminal Code (KUHPM). The crime has not been able to fulfill a sense of justice and a deterrent effect for other members of the TNI, here I will present the Matrix of Amendment to Regulations concerning the Criminal Acts of Dissertation for TNI Members as follows:

Matrix of Amendments to the Regulations

| No | Act Regulations | Regarding | Information |
|----|------------------------|------------------------------|--|
| 1. | UU Nomor 26 Tahun 1997 | Hukum Disiplin Prajurit ABRI | can be resolved by disciplinary law, if their absence is not more than 30 days. If it is more than 30 days, it must be resolved through a military court trial or resolved by criminal law. |
| 2. | UU Nomor 31 tahun 1997 | Perdilan Militer | Pasal 143: Cases of criminal acts of desertion as referred to in the Criminal Code of the Defendant escaped and was not found in period of 6 (six) consecutive months and has attempted summons 3 (three) times consecutively legally, but not present at the trial without reason, inspection can be carried out and decided without the presence of the Defendant. |

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| No | Act Regulations | Regarding | Information |
|----|--|----------------------------|---|
| 3 | SEMA Nomor 1 Tahun 2017 tanggal 19 Desember 2017 | Rumusan kamar militer 2017 | Based on desertion in peacetime it can be decided by calling and searching for the Defendant (the perpetrator of the crime of desertion) within 5 months and then criminal sanctions can be imposed by attaching a summons or search for 3 (three) times. |
| 4 | SEMA Nomor 5 Tahun 2021 tanggal 28 Desember 2021 | Rumusan kamar militer 2021 | Desertion in peacetime can be decided by calling and searching for the Defendant (the perpetrator of the crime of desertion) within 1 month, the sanction can be imposed in the form of imprisonment if found and additional punishment in the form of dismissal from military service TNI. |

From the table above, it can be seen that the formulation of the rules has been applied several times in order to achieve the purpose of law and the achievement of justice for all Indonesian people.

- b. The importance of reformulating regulations in order to create a sense of justice for all the people of Indonesia and the achievement of the objectives of the criminal act of Desertion for members of the TNI.

In fact, with various formulations of rules and provision of rules for every member of the TNI still the case is increasing. Basic supplies as a member TNI and making regulations are only considered as an effort to prevent acts of violence desertion, as well as making it easier for law enforcers to resolve cases. However, there are still some things that have not been studied in depth, in which case

TNI members who act as perpetrators of the crime of desertion also have the right to act as citizen which is already stated in the 1945 Constitution where every citizen have the same rights in the eyes of law and government, but in a shorter time. The time for the settlement of the criminal act of the dissertation is indirectly the rights of the members TNI as an Indonesian citizen which is also included in Article 27 paragraph 2 where each Citizens have the right to work and a decent living for humanity, to be. On the other hand, in a long period of time the soldier has already carry out their service and obligations as a member of the TNI, but within the whose rights as members of the

TNI are very short, namely to receive welfare and a decent life to be abolished with a timely settlement of the case be shorter. Even though as a member of the TNI, apart from serving himself, to the Nation and the state internally as well as the backbone for his family.

The problem of law enforcement on deserters is closely related to prevention efforts and countermeasures. According to Barda Nawawi Arief [11]. Efforts or policies to prevent and overcome crime, including the field of “criminal policy can not be separated” from other policies that are broader in nature, namely social policies, which consist of efforts to protect society. Thus, if the policy the settlement of the crime of desertion is carried out by using the means of criminal law, especially on judicial/applicative policies (criminal law enforcement in concreto) must be continue to pay attention to and lead to the achievement of social goals and policies and then to both the perpetrator and the environment.

Based on the description above, it is an effort to analyze the formulation of a criminal act policy The current desertion, especially the problem of the very long completion time, briefly faced with sanctions that are severe enough to require dismissal analyzed and efforts to reformulate the legal policy against Law Number 31 of 1997 and the enforcement of military criminal law in Indonesia in achieving national goals need to be conducted. The results of the formulation of the Military Chamber No. 5 of 2021 dated December 28, 2021 regarding the completion of the criminal act of Dissertation committed by members of the TNI in just 1 (one) month, dismissal can only be carried out by attaching 2 (two) pieces of evidence in the form of a list of absenteeism from the Defendant and witness statements. Which only refers to the truth if the Defendant is not in the unit without permission for a minimum period of 1 (one) day and [11] a maximum of 31 (thirty one) days creates a sense of injustice for the perpetrator as the backbone of the family as well as for the extended family of the TNI, because the short time and the lack of evidence included do not create relevance or harmonization between punishment and justice for the perpetrators to be able to resume their lives as Indonesian citizens who already have expertise in the military field and have provided service to the unity and nation and state of Indonesia.

The laws and regulations related to the punishment of the perpetrators of the crime of Dissertation, namely Law No. 31 of 1997 will then be juxtaposed with the formulation of the Military Chamber based on SEMA No. 1 of 2017 dated December 19, 2017 regarding Desertion in peacetime. The defendant (the perpetrator of the crime of desertion) within 5 months and then the criminal sanction can be imposed by including a summons or search for 3 (three) times then juxtaposed again with the latest regulation, namely SEMA Number 5 of 2021 dated December 28, 2021 concerning Desertion in Peacetime can be decided by calling and searching for the Defendant (the perpetrator of the crime of desertion) within 1 month, the sanction can be imposed in the form of imprisonment if found and additional punishment in the form of dismissal from military service.

The settlement time currently enforced is of course far from the provisions of the Act which has stated the time is 6 (six) months if it is returned to the purpose of the punishment itself, can it be achieved with the implementation of SEMA Number 5 of 2021 on December 28, 2021, although in terms of effectiveness the settlement of the case can be carried out, but what about other matters related to the impact and purpose of the

sentence. Changes in the rules that are used as the basis for punishing the perpetrators of the crime of desertion. In addition to the disciplinary rules for soldiers who are the basis, there are still many other laws and regulations that are used as the basis for the punishment of deserters. And time efficiency can be met with the implementation of these new rules, but whether this has been able to create a sense of justice for the perpetrators and their families who are also the big family of the TNI, what are the factors that cause the emergence of a sense of injustice for the convicts and in particular for the perpetrators? family side. And then how to get and formulate ideas to overcome the sense of injustice to the perpetrators and the family.

Situation problems and gaps occur when the family feels they have not received justice immediately in a short time the salary of the perpetrator who is used as a source of family livelihood in a short time is cut off because the person concerned is dismissed from service without being given longer time and opportunity to earn a living. And a decent income for their lives and their families as well as the lack of evidence that is used as the basis for dismissal in desertion cases committed by members of the TNI, the effectiveness of the search for deserters certainly needs to be reactivated and carried out very seriously considering that as members of the TNI, they already have expertise in the field. Military field.

3 Conclusion

Various regulations that have changed along with the times have not been able to lead to the goal of criminalizing the crime of desertion, it can be seen that the crime rate has not decreased, so that providing a deterrent effect for perpetrators and providing examples to other individuals has not been achieved, in outline a great sense of justice for the perpetrators and the perpetrators' families has not been fulfilled. In short, the settlement time up to the sentencing in the form of dismissal reduces the effectiveness of the performance of law enforcement officers, because with the short time given by the Military Police as investigators, they cannot optimally conduct searches and can only present 2 (two) pieces of evidence in the form of a list of attendance and statements of witnesses. From the Unity. Changes in the rules related to the search time listed in SEMA need to be in accordance with Law 31 of 1997 which is still guided by the purpose of punishment and the principle of social justice for all Indonesian people to be re-enacted or not deviated too far while still prioritizing the principles of justice and humanity for all people. Indonesia, especially the TNI. The rights and awards for services that have been given to the State for the perpetrators in this case are the TNI also need to be considered and get attention in giving threats of punishment up to dismissal, considering that a member of the TNI who has served in the military certainly has the ability and knowledge in the military field. it is necessary to be aware that this ability after dismissal does not cause problems or other crimes to arise.

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