

# Implementation of the Imposition of Criminal Sanctions by Military Judges on Deserted Members of the Indonesian National Armed Forces

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**Abstract.** Each individual from the TNI should endlessly submit to the lawful arrangements that apply to the military, in particular the Tactical Crook Code (KUHPM), Military Disciplinary Regulation (KUHDMP), Military Disciplinary Guidelines (PDM), and different guidelines. This tactical regulation guideline is applied to enrolled faculty, non-dispatched endlessly officials who perpetrate a demonstration that is impeding to the unit, the overall population, and the state which can't be isolated from different guidelines that apply likewise to the overall population, to be specific the presence of a crook demonstration of paper committed by individuals from the TNI.

**Keywords:** implementation; criminal sanction; indonesian national army; desertion

## 1 Introduction

Regarding equality before the law, it is a mandate of the 1945 Constitution of the Republic of Indonesia that must be implemented, which is intended for every citizen, including members of the military who are part of the citizenry. Article 27 section (1) of the 1945 Constitution expresses that all residents are equivalent under the watchful eye of the law and government and are obliged to keep up with the law and the public authority regardless having given areas of strength for a premise where individuals from the military likewise have similar freedoms and commitments as residents. others under the steady gaze of the law.

The position before the law of military members is no different from other citizens of the country, however, the legal procedures that must be followed by members of the military (TNI) who violate the law or criminal acts are different from the people in general (civilian), because military members are subject to military justice and the general public is subject to the general judiciary.

A tactical association has been viewed as an association that is shut by a great many people. This view doesn't preclude the chance of being coordinated to military courts, which have been seen by the general population as shut courts, consequently making negative bias from the overall population that all policing against liable fighters are not done reasonably and lawful experts survey the decision. Military courts in impressive sentences for troopers who are at legitimate fault for carrying out wrongdoings are delegated light.

According to a legitimate perspective, military individuals have similar situation as customary public residents, intending that as residents, every single relevant regulation, including criminal regulation, common regulation, criminal strategy, and common system, apply. The thing that matters is that more unambiguous guidelines are as yet required on the

grounds that a few activities must be completed by fighters that are military in nature and don't make a difference to people in general, for instance: declining official orders, conflicting with orders from bosses (disobedience), and abandoning.

The crook acts referenced above mirror the idea of a tactical individual who overlooks morals and the guidelines of disciplinary regulation that apply inside the TNI. A soldier should be required to be in the unit continuously during his service period and should not refuse let alone go against official orders. If he wants to leave the unit for a purpose, he must first get permission by the rules that apply within the TNI.

By the explanation of the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts, the settlement of criminal cases that occur inside the Military of the Republic of Indonesia includes a couple of stages or levels as follows:

1. Level of examination.
2. Level of case accommodation.
3. Level of execution of choices

The stages referenced above are practically equivalent to the phases of settling criminal cases in the General Court, then again, actually the device is approved to determine various cases. In military courts, those who have the right to become investigators are "officials who based on laws and regulations are authorized to conduct investigations against members of the TNI and or those who are subject to military courts" in particular the Tactical Police are obliged to complete analytical activities under the strategies and systems controlled in Regulation Number 31 of 1997 concerning Military Courts.

Pompe mentions 2 special criminal law criteria, namely people who specifically mean the subject or the perpetrator, an example of military criminal law and the second is a special act, an example of fiscal criminal law for tax offenses [1] committed within the TNI is a crime of desertion. The crook demonstration of departure is managed in article 87 of the Tactical Lawbreaker Code (KUHPM) which peruses:

1. Threatened for desertion:
2. in the first place, who leaves to forever pull out from his organization responsibilities, staying away from the bet of war, moving over to the foe, or entering military help with a State or other power without being veritable for it;
3. Desertion committed in peacetime is deserving of a greatest detainment of two years and eight months.
4. Desertion committed during the conflict is deserving of a most extreme detainment of eight years and a half year.

## **2 Problem**

The issue in this paper is about how to carry out the burden of criminal approvals by military appointed authorities on individuals from the Indonesian Public Armed force who perpetrate the wrongdoing of departure.

## **3 Method and Approach**

### **Method**

The method used in the writing of this applied paper is the descriptive analytical method, namely by using data that clearly describes the problems directly in the field, then analyzing, and then concluding to reach a problem solution. The collecting data method is

through observation and literature study to obtain problem-solving in the preparation of this paper.

### **Approach**

The normative juridical approach, namely the juridical approach method used to examine the problem from a legal and systematic perspective, and as a guide to legal rules, norms, or other applicable legal regulations regarding the implementation of the imposition of criminal sanctions by military judges on members of the National Army Indonesia which committed the crime of desertion.

## **4 Discussion**

### **Forms and Types of Desertion**

Demonstrations of the shortfall of military individuals from one spot to do official not entirely settled as a wrongdoing on the grounds that the enthusiasm for discipline is extremely critical in military life. Taking everything into account, discipline is the underpinning of military life. It isn't equivalent to the presence of non-military relationship, in that the show isn't a bad behavior, yet an encroachment of various leveled discipline.[2]

The types of abandonment, referenced in the book of the TNI Legitimate Advancement Organization in view of the arrangements of Article 87 of the Criminal System Code, there are 3 (three) types of renunciation, specifically:

1. Pure types of renunciation, to be specific departure for reasons for, among others:
  - a. Go to pull out from administration commitments forever. Even if the perpetrator before leaving had told a close friend of his determination about his intentions, then shortly after leaving he was arrested by the officers, then the incident was considered a desertion crime. From his service obligations, it means that if the perpetrator leaves his unit, with the intention of forever and does not carry out his duties and obligations as a military officer, then the act is desertion.
  - b. Go to stay away from the risks of war. It implies a tactical man whose flight meaning to keep away from risk fighting by taking off, at a vague time, such a demonstration can be supposed to be renunciation in season of war.
  - c. Go to move over to the foe. To move over to the foe is the expectation or reason for the culprit to proceed to favor the foe whose reason can be demonstrated (for instance before his takeoff he uncovered to his dear companions to go on the adversary), then the culprit has abandoned.
  - d. Go illicitly enter unfamiliar military assistance. The meaning of entering military help is on the off chance that the reason for the culprit is to enter the force of different soldiers, laskars, sectarians, etc from a radical association connected with reconnaissance issues, this activity incorporates the wrongdoing of departure.
2. Forms of abandonment because of time as an expansion in wrongdoing from non-appearance without authorization, specifically:
  - a. Unlawful nonappearance because of his/her issue, the length of which surpasses 30 (thirty) days of peacetime, for instance an individual from the tactical who perpetrates a wrongdoing of deliberate or purposeful nonattendance in peacetime for 30 days proceeds.
  - b. Invalid nonappearance because of his/her lack, longer than 4 (four) days during battle, for instance, an essential power who executes the terrible way of behaving of deliberate

non-cooperation when the State is in a condition of war or the military is being given out to a unit in a contention district.

- c. Form of renunciation in light of the fact that subsequently. This is as alluded to in Article 87 passage (1) 3, by and large remembered for the importance of Article 85 2 or more the presence of a component of aim with respect to the culprit.

As per S.R Sianturi, four sorts of ways or conditions are figured out as a type of an unadulterated paper, specifically: [3]

1. Military individuals who leave with the aim (oogmerk) to pull out from their administration commitments for all time;
3. Military personnel who leave intending to avoid the dangers of war;
4. Members of the military who leave to cross over to the enemy; and
5. Military individuals who leave to enter military help in a nation or other power without being legitimate to do as such.

The definition of leaving is emphasized in Article 95 of the Criminal Code, namely the act of distancing oneself from, being absent from, or leaving oneself behind to arrive at a place or places where the military should be to fulfill the obligations of the service assigned to it; the so-called absence is not present at the place or places. The component of being illegal is suggested in Article 87 of the KUHPM above assuming it is related with the arrangements of Article 95 of the KUHPM, that what is implied by leaving (verwijderen) acts:

1. Abstain from (zich verwijderen);
2. Hiding away from;
3. Continuing the absence to; or
4. Make yourself leave behind to arrive at a place or places where the military should be to fulfill the service obligations assigned to him.

As is notable, one component of each and every wrongdoing is illegal, either expressly or certainly. [4]

The piece of being unlawful in Article 87 passage (1) 1 is essentially undeniably organized which should be possible up from one of these reasons: To avoid (zich verwijderen); Stowing away from, and Going on with the nonappearance contained for the guilty party and should be associated with the demonstration of his flight.

An individual from the tactical who plans to forever pull out from his administration commitments, keeping away from the risks of battle, as long as the expectation is in his own heart, isn't understood by genuine activity, inasmuch as that aim can't be supposed to be a demonstration that is illegal. In like manner, the demonstration of "going away", is not necessarily an act that is against the law, if the departure is without permission, it is clear that the unlawful nature is contained in the words "without permission", but if the departure has received permission (eg leave) then leaving is not against the law. Therefore, only after the intention is manifestly manifested in an action (in the case of his departure) there is an unlawful nature of the action. [1]

In light of this, in the event that an individual from the tactical leaves his place and obligations, the spigot has previously gotten time away, anyway it turns out later that the strategic part designs not to return to his place of commitment unendingly, the showing is at this point unlawful in spite of the way that his flight was "with assent". furthermore, simultaneously, such a demonstration or deed has satisfied the components of the wrongdoing of abandonment.

Article 87 section (1) 2 determines that individuals who are at genuine problem for or purposely missing without assent in a period of congruity longer than 30 (thirty) days, in a

period of war longer than four days. Taking into account this article, it will overall be seen that very far for flight is thirty days. Renunciation did per Article 87 of the Criminal Technique Code, the assents are restriction and excusal from individuals from the military since there is a lawbreaker risk in that article. Assuming that misconduct is done for under 30 (thirty) days then again in case nothing else one day, it shouldn't be visible as a lawbreaker display of departure at any rate is called missing without consent which can be settled by military discipline rule (for instance because of late help in military units. 75 Nonappearance without consent for one day here is for 1 x 24 hours. As a benchmark for closing the nonattendance, not permanently set up from being missing at the apple, or when it is essential/critical to be missing at the consigned spot to complete the jobs given out to him.[5]

Conclusively, taking into account the Juklak Kasal, it is imparted that double-crossers who are more than 30 (thirty) days then again if nothing else on the 31st day have been verbalized turncoats. The departure recommended this is the thing is justifying discipline and excusal, which is positively not a legitimate settlement of military discipline considering the way that the time has sneaked past for more than 30 (thirty) days or possibly the 31st day since the renunciation was communicated. [6]

### **Implementation of Imposition of Criminal Sanctions by Military Judges for Deserted TNI Members**

TNI people who will be sentenced to prepare for their exercises ought to meet the conditions determined in the game plans of Article 5 of Guideline No. 26 of 1997 concerning Military Discipline (hereinafter curtailed as the TNI Fighter Discipline Act). Article 5 of the TNI Warrior Discipline Regulation, avows, "Infringement of trooper discipline are serious insubordination and noncompliance to fighters who depend on the Sapta Marga and the Trooper's Vow to do their obligations and commitments by the guidelines or methods for the existence of fighters".

Disciplinary violations of TNI members under the provisions of Article 5 of the TNI Soldier Disciplinary Law include violations of pure disciplinary laws and violations of impure disciplinary laws. Violation of pure discipline is any act that is not a criminal act, but is contrary to official orders or official regulations or actions that are not following the soldier's life order, for example: being late for apples, unkempt clothing/unbuttoned or dirty clothes, long hair, and untied shoes. polished. The type of punishment for this violation is in the form of disciplinary punishment for soldiers in the form of physical action or verbal reprimand to raise awareness and prevent the recurrence of this violation such as push-ups and running around the field. Meanwhile, the violation of impure disciplinary law is any act that is criminal act of such a light nature that it can be resolved by military disciplinary law. Minor wrongdoings are criminal demonstrations that are deserving of detainment for a limit of 3 (90 days) or detainment for a limit of 6 (six) months or a greatest fine of Rp. 6,000,000 (6,000,000 rupiahs), the case is straightforward and simple to demonstrate and the offense criminal demonstrations that happen won't bring about disturbance of the interests of the TNI or the public interest, for instance, Minor abuse that doesn't make disease or deterrents completing work. The kind of discipline for this infringement is as disciplinary discipline for warriors as light detainment for a limit of 14 (fourteen days) or serious confinement for a limit of 21 (21 days). The party who has the option to force a wide range of disciplinary discipline on each individual from the TNI who is under his order authority is the Leader or Better who has the right than Rebuff (hereinafter alluded to as Ankum) which is done in a disciplinary hearing. [7]

The sorts of takeoff did by people from the TNI or people from the military as insinuated above can be applied to the guilty parties of the courses of action of Article 88 of the KUHPM.

(1) The maximum criminal penalty applied in Articles 86 and 87 is doubled:

1. If at the hour of perpetrating the wrongdoing, it has not been a long time since the culprit has served all or a piece of the discipline forced on him by a decision for renunciation or stubbornly absenting himself without consent or since the discipline was totally eliminated for him, or on the other hand if when he carried out the wrongdoing that the option to do the wrongdoing has not yet lapsed.
2. When something like two people, each for themselves in executing one of the infringement in Articles 86 and 87, go together or as a continuation of a naughty plan.
3. When the perpetrator is a military commander.
4. When he commits the crime while on duty.
5. When he goes or abroad.
6. When he perpetrates the wrongdoing by utilizing an ocean boat, airplane, or vehicle remembered for the military.
7. If he carries out the wrongdoing by carrying with him a creature utilized for the requirements of the military, weapons, or ammo.

(2) If the wrongdoing in Article 86 or the wrongdoing of departure in tranquil conditions is accompanied by two or more conditions in paragraphs (1) number 1 to 7, then the maximum criminal threat specified in the paragraph is increased by half.

The meaning of the article above is weighting. The aggravation referred to in Article 88 paragraph (1) number 1 of the Criminal Code is commonly referred to as repetition or recidivism, which means that the perpetrator has already been sentenced by a judge for committing a crime similar to the crime he is currently committing, so in a case like this, desertion or absenteeism is illegal on purpose. The act can only be said to be a repetition when the expiration time of the crime has not expired. The elegance time frame terminates (verjaring) As per the Crook Code for all infringement following 1 (one) year; for wrongdoings that are compromised with a fine, constraintment, or detainment of a limit of 3 (three) years that lapses following 6 (six) years; for violations that are deserving of detainment for more than 3 (three) years, the expiry date is 12 (twelve) years; and for violations that are deserving of death or life detainment terminate following 18 (eighteen) years. Be that as it may, explicitly for the wrongdoing of renunciation, the expiry time frame is 12 (twelve) years following the arrangements of Article 41 of the Lawbreaker Code. [1]

The importance of Article 88 passage (1) number 2 of the Lawbreaker Code over, the weight is because of the collaboration between the culprits, whether done intentionally or unwittingly and the violations don't have to happen simultaneously. If he finishes the terrible way of behaving by means of conveying with him a creature utilized for the requirements of the military, weapons, or ammo. [1]

The weighting alluded to in Article 88 passage (1) number 4 of the Common Code for military individuals who are performing official obligations were the people who are performing official obligations. The significance of doing support is more extensive than the importance of playing out an obligation. What is likewise exasperating for the culprits in Article 88 section (1) number 5 of the Crook Code is in the event that the wrongdoing of departure is absent wrongfully perpetrated by leaving state or carried out abroad or abandoning an out of the area of NKRI. Disturbance is implied by Article 88 section (1) number 6 when the wrongdoing is perpetrated via conveying a boat or boat, airplane, or vehicles having a place with the TNI. This

wrongdoing might be a demonstration that is a progression of criminal demonstrations, in particular as well as perpetrating renunciation, likewise carrying out robbery of military hardware. The exasperating matter alluded to in Article 88 section (1) number 7 of the Crook Code above is that the wrongdoing is carried out via conveying creatures, weapons, or black powder that ought to be utilized to assist the TNI. The creatures alluded to here are creatures that can be utilized to serve the TNI, like ponies, canines, post pigeons, and others that are viewed as essential to help the conflict in troublesome territory circumstances. [1]

While the importance of the arrangements of Article 88 passage (2) of the Crook Code decides the seriously irritating matter until the danger of discipline is expanded considerably, after the discipline in Article 88 section (2) of the Lawbreaker Code is multiplied. The irritating thing is the point at which the culprit carries out a wrongdoing that is went with or not lawful on the grounds that it is purposeful, joined by at least two individuals from the arrangements as alluded to in Article 88 passage (1) from number 1 s/d 7 of the Crook Code.

## **5 Conclusion**

Desertion as referred to in Article 87 of the Criminal Code is a purely military crime and is not a disciplinary offense so the settlement cannot be resolved through military disciplinary law but must be resolved through a court trial. Therefore, those who have the right to adjudicate the crime of desertion are Military Judges in the Military Criminal Justice System, where the form of imposing military crimes is contained in Article 6 of the Criminal Code, namely in the form of basic punishments (namely: death penalty; imprisonment; confinement; criminal closure) up to additional punishment. (ie: dismissal from military service with or without revocation of his right to enter the TNI; demotion; and revocation of the rights mentioned in Article 35 of the Criminal Code).

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