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# Legal Review on Military Criminal Acts in Peaceful Time Done Repeatedly According to the KUHPM and KUHP Based on Military Court Decision II-09 Bandung Number: PUT/067-K/PM-II-09/AD/III/2012

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### Abstract

This study aims to determine the military crime of desertion based on the decision of the military court of Bandung City. The settlement process for desertion crimes committed by members of the Indonesian National Armed Forces basically includes the Military Court, the High Military Court, the Main Military Court, and the Military Combat Court (Article 31 of Law Number 31 of 1997). The Military Court, like other judicial bodies, also leads to the Supreme Court as the highest court in Indonesia. This research was taken with a descriptive method, meaning that it aims to describe in full the characteristics and circumstances, personal and group behavior by separating the data that has been collected according to their respective categories, to be interpreted in an effort to answer problems in writing. So the results of this study explain that, according to the Law of the Republic of Indonesia Number 25 of 2014 concerning Military Disciplinary Law, Article 8 CHAPTER V entitled Military Disciplinary Law and Military Disciplinary Punishment explains that several types of Military Disciplinary Punishment Violations have been published by the government Indonesia consists of all acts that are contrary to official orders, official regulations, or actions that are not in accordance with military rules and acts that violate criminal laws and regulations of such a light nature. In addition, judges at the Military Court are appointed and dismissed by the President as Head of State at the suggestion of the Commander in Chief and based on the approval of the Chief Justice of the Supreme Court. For this reason, before taking office, judges are required to take an oath or promise according to their respective religions. According to Article 23 of Law Number 31 of 1997, the power of the Military Court is to examine and decide at the first instance a criminal offense in which the defendant is a soldier with the rank of Captain and below, a member of a group or service or agency or who is equal or considered a soldier based on the law. The rank of Captain and below and a person who is not the same as a soldier or member of a group or service or agency that is not equal is not considered a soldier under the law which must be tried by the Military Court.

**Keywords:** Military Crime, Legal Review, Military Desertion.

## A. Introduction

In social life, basically, it is much influenced by the surrounding environment that are interconnected with each other, one of which is the relationship between humans and other creatures. Likewise, social life in society will always be driven by human nature itself, namely as creatures who have the necessities of life, both material needs and immaterial needs. And therefore humans (each) will always try to fulfill all their needs (Anthony, 2020).

As one of the social creatures, humans certainly have a social life that allows the emergence of things that are always at the same time, appropriate and commensurate, but there can also be things that we do not want so that they contradict each other. The conflicts that arise tend to lead to chaos, while the chaos in question is not what we want in social life and is very contrary to the essential nature of humans who want order, harmony and prosperity in their lives.

In order to achieve and maintain order in social life, it is necessary to have provisions or norms that determine how humans should behave in society, so that any violation of these norms or rules will cause a reaction from the community environment. around. Given the complexity of human life in the association of life, the rules needed are also very diverse according to the nature of the association of life itself. One of the required rules is a rule or legal norm, namely a regulation of social life that is regulating and coercive to ensure order in social life (ERVINA et al.,).

Violation of the rule of law in the form of a disturbance in the sense of justice that is felt so deeply that it gives rise to a reaction from the association of life which is not enough just to be a reaction that is usually found in violations of social rules, but in the form of a reaction that is usually placed in the hands of the leader of the association. the life of the person concerned in the form of strict sanctions and can be imposed from the applicable legal rules. Among these legal rules there are criminal law rules which consist of norms that contain imperatives and prohibitions that have been linked to a sanction in the form of a criminal, namely a special suffering (Faliani et al., 2021).

A person is said to have violated the rules of criminal law if he intentionally or by negligence commits an act or allows an act that is prohibited or required and is contrary to the interests of the community and the interests of the state which are protected by law and are subject to criminal threats according to law. In connection with the formulation of the criminal law, acts or events that are contrary to criminal law are known as criminal acts. The Criminal law currently in force in Indonesia is as regulated in the Criminal Code (KUHP) originating from WETBOEK VAN STRAFRECHT VOOR~ NEDERLAND INDIE which was enforced in Indonesia at that time when it was still called the Dutch East Indies based on Koninklijk Besluit ( King's Decree) dated October 15, 1915 No. 33 Stb. 1915 Number 732 jo Stb. 1917 No. 497 and 645 which entered into force on January 1, 1918.

Then after Indonesia's independence, the existence of the Criminal Code was ratified through Law Number 1 of 1946 with the abbreviation KUHP. The types of crimes that can be imposed on someone who has been proven guilty of committing a criminal act as determined by a court decision regulated in the provisions of Article 10 of the Criminal Code consists of the main punishments including the death penalty, imprisonment, confinement and fines. Meanwhile, additional punishment consists of revocation of certain rights and the confiscation of certain goods. In the development of an increasingly fast and globalized world that gives birth to new criminal acts that are increasingly varied and modern, it turns out that the existing Criminal Code can no longer accommodate them. This is because the existing Criminal Code has not accommodated and regulated the various new forms of criminal acts.

However, over time the new criminal law was grouped into a special criminal law, also known as Jus Speciale, which is a criminal law that applies specifically to

members of the military. Military Disciplinary Law is a punishment imposed by superiors who have the right to punish subordinates who are under their command authority, for violating the Military Disciplinary Law. Every member of the Indonesian national army and army is obliged to submit and obey the provisions that apply in the military environment, including compliance with the Military Criminal Code, hereinafter referred to as the Criminal Code (KUHPM), (HADIMAN, 2015).

According to the Law of the Republic of Indonesia Number 25 of 2014 concerning Military Disciplinary Law, Article 8 CHAPTER V entitled Military Disciplinary Law and Military Disciplinary Punishment explains that several types of Military Disciplinary Penalties that have been issued by the Indonesian government consist of all acts that contradict with official orders, official regulations, or actions that are not in accordance with military rules and acts that violate criminal laws of such a light nature.

According to the provisions of Article 5 of Law Number 31 of 1997, the Military Court is the executor of Judicial Power within the armed forces (TNI/POLRI) to enforce law and justice by taking into account the interests of the implementation of state defense and security. For the technical development of courts within the Military Courts (Article 6), the Supreme Court shall do so. Thus, the Supreme Court has the authority to provide guidance and supervision to all Military Courts which are carried out in daily practice by the Main Military Courts. In this regard, it must be remembered that all judicial bodies in Indonesia lead to the Supreme Court as the highest judicial body, including the Military Courts. Concerning organizational development and procedures, administration, finance, judicial bodies and the Oditurat, it is carried out by the Commander in Chief. Which guidance should not reduce the freedom of the judiciary in examining and deciding cases (MARPAUNG, 2021)

The crime of desertion is a very prominent crime among the military. Desertion is the act of leaving military service with no intention of returning. In Chapter III of the Criminal Procedure Code which is entitled a crime which is a way for a military person to withdraw from carrying out his service obligations, Article 86 reads, the military, who intentionally does not attend without permission will be threatened with a maximum imprisonment of 1 year and 4 months, if the absence in peace time is at least 1 day and not longer than 30 days.

The relationship between General Criminal Law (KUHP) and Special Criminal Law (outside the Criminal Code) is that the provisions of general criminal law remain valid in addition to the provisions of special criminal law as complementary law. Likewise, special criminal law may deviate from the provisions of general criminal law. The definition of criminal responsibility according to the Science of Criminal Law cannot be separated from the teaching of the ability to be responsible for someone who has committed a crime. According to the form and nature of criminal acts are acts that violate the law or against the law. However, not all acts that violate or violate the law can be said to be criminal acts because the main requirement for the existence of a criminal act is that in reality there must be rules that prohibit and threaten criminality or punishment for anyone who violates it which is known as the principle of legality and the act must fulfill the elements of a criminal act, namely intentional and negligence. If the two elements of a crime are connected with a

prohibited act, it will result in an error. So based on the description and explanation of the background above, the researcher has focused on the problem point on how the relevance of criminal responsibility for a military officer who makes a dissertation with weighting is related to the theory of criminal responsibility according to Indonesian Criminal Law Science.

## **B. Research Methods**

This research is descriptive in nature, meaning that it aims to describe in full the characteristics and circumstances, personal and group behavior by separating the data that has been collected according to their respective categories, to then be interpreted in an effort to answer problems in writing. The approach used is normative juridical, meaning a method that analyzes the provisions relating to material criminal law (positive) and besides that it also examines the legal rules that have been applied in the decision of the Military Court II-09 Number PUT/067 - K/PM-II-09/AD/III/2012. While the data that is inventoried as research material is secondary data, namely data from library materials or literature books, including primary legal materials in the form of legislation as binding legal materials and including secondary legal materials as 1 (one) file. decision of the Military Court II-09 Number PUT/067-K/PM-II-09/AD/III/2012. After the data is inventoried, then it is analyzed qualitatively in the form of data analysis activities by describing logical-systematic discussions without statistical formulas. These data and references are used as reference material in order to understand or obtain a deep and comprehensive understanding. After that, the existing problems are solved inductively, namely by concluding specific things to general things, and deductively, namely by concluding general things to specific things. 2011).

## **C. Result And Discussion**

### **1. Discussion of the matters revealed at the trial regarding the decision of the military court**

If you pay close attention to the initial steps in conducting the trial, basically it is closely related to the problem of proof. The evidentiary system adopted in the Criminal Procedure Code (Law Number 8 of 1981) in conjunction with Law Number 31 of 1997 concerning military justice is a system or theory of proof based on a negative law which reads, judges may not impose a crime on a person unless by at least two valid pieces of evidence he is convinced that a criminal act has actually occurred and the defendant is guilty of committing it. From the description of the sentence above, we can conclude that evidence must be based on the Law (KUHP), namely valid evidence as stated in the provisions of Article 184 of the KUHP accompanied by the judge's conviction obtained from the evidence (Nugroho, 2010).

Then for the sake of proof, it is necessary to have these objects as concrete evidence. The relationship between the evidence in the evidence can be seen in the provisions of Article 181 of the Criminal Procedure Code which reads as follows, the presiding judge at the trial shows the defendant all the evidence and asks him whether he knows the object by taking into account the provisions as referred to in Article 45 of this Law. The criminal process and the presence of evidence are very

important for the judge to seek and find the material truth of the case he is handling or examining. Evidence and evidence have a close relationship with each other and this is a series that cannot be separated. If this problem is related to the case examined and resolved by the Military Court II-09 Bandung as the case discussed, it can be concluded that the evidence presented in the trial court is only three kinds, namely, witness statements, instructions, and statements from the defendant. .

In the judicial system adopted in our country, the courts only examine and decide criminal cases on the basis of the indictment of the Public Prosecutor. No criminal case can be tried in court without the case being filed by the Public Prosecutor, the only official authorized by law to commit such acts as regulated in the provisions of Articles 13, 14, 15 and 143 of the Criminal Procedure Code and Articles 2 and Article 8 of Law Number 5 of 1991 concerning the Prosecutor's Office of the Republic of Indonesia. In the provisions of Article 13 of the Criminal Procedure Code, it is stated that the public prosecutor is a prosecutor who is authorized by law to carry out prosecutions and carry out judges' determinations, while his authority includes (1) receiving and examining investigation case files from investigators or assistant investigators (2) conducting pre-prosecution if there is a deficiency in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4) by giving instructions in the context of completing the investigation from the investigator (3) Giving an extension of detention, carrying out further detention or detention and or changing the status of the detainee after the case has been delegated by the investigator (4) Deliver notification to the defendant regarding the provisions on the day and time the case will be heard accompanied by a summons, both to the defendant and to witnesses, to come at the hearing that has been determined (Purwanta et al., 2021).

It can be said here that one of the fundamental principles in the criminal process is the necessity of the Public Prosecutor to make an indictment. In the indictment referred to and contains the facts that are indicted against a defendant and the judge may only decide on the basis of these facts it cannot be less or more. In the case of the Public Prosecutor in the Military Court, he is known as the Military Prosecutor. As for what is meant by Military Auditor according to the provisions of Article 57 of Law Number 31 of 1997 is a functional official who in carrying out prosecution acts for and on behalf of the community, government and state and is responsible according to hierarchical channels (Rahmayanty, 2020).

Basically, from all the articles in the Criminal Procedure Code (Law Number 8 of 1981) and other laws including Law Number 31 of 1997, there is no definition or limitation of the indictment letter. Thus we can assume that, regarding the limits of the indictment left to the experts, judicial practice and jurisprudence. The conditions that must be fulfilled by the indictment according to the provisions of Article 143 paragraph (2) of the Criminal Procedure Code in conjunction with Article 130 of Law Number 37 of 1997 are the public prosecutor to make an indictment which is dated and signed and contains, full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect and make a detailed, clear and complete description of the criminal act charged with mentioning the time and place of the crime being committed. As for the form and composition of the indictment, there are no rules in the Criminal Procedure Code, but theoretically

according to the views of experts and in judicial practice and in its development, it is known that there are 5 (five) forms of indictment, namely single indictment, cumulative indictment, subsidiary indictment, alternative indictment and combined charges.

## **2. Discussion on the decision of the panel of judges at the military court II-09 Bandung City regarding the crime of dissent**

After the examination process in the trial is declared complete, the Public Prosecutor or Military Prosecutor submits a requisitoir or criminal charge. What is meant by prosecution is an action to delegate the case to the competent District Court or Military Court where the case delegated must involve the matters described in the indictment and the method and who delegates it must also be in accordance with the provisions of the Criminal Procedure Code or specifically for the military. must comply with the provisions of Law Number 31 of 1997. Officials who carry out prosecutions of criminal cases examined in court are the Public Prosecutors or Military Auditors as stipulated in the provisions of Article 13 of the Criminal Procedure Code in conjunction with Article 57 of Law 31 of 1997 as described above. in advance. These two tasks are only given to the Prosecutor's Office or the Oditurat, which means that no other institution is authorized by law to carry out these tasks. This right aims to obtain certainty and guarantee, protect, and uphold the human rights of the people against the authorities who are represented by the Public Prosecutor or Oditurat (Saillellah, 2020).

Prosecution is very closely related to investigation because in the criminal justice process prosecution is the next step after the investigation stage is carried out. This is as regulated in the provisions of Article 1 point 7 of the Criminal Procedure Code, (while in Law Number 31 of 1997 this issue is not regulated in detail). If it turns out that the guilt charged against the defendant is proven legally and convincingly and is indeed a criminal act, then the Public Prosecutor submits a criminal charge called a "requisitoir" based on the Circular Letter of the Attorney General of the Republic of Indonesia dated 27 February 1985 Number SE-002/JA/ 1/1985 on the results of systematic examinations

If the above provisions are related to the demands (requisitoir) of the Military Prosecutor in the case discussed in this thesis, it can be explained that the Public Prosecutor in making legal demands against the Defendant Prada Irvan Prasetya Nrp. 31060287430986 Tabakpan Ton 3 Kidemlat Pusdikif Pussenif Kodiklat TNI AD has fulfilled the requirements as stipulated by the applicable laws and regulations, namely Law Number 8 of 1981 and Law Number 31 of 1997 along with other related regulations. In the event that the criminal prosecution made by the Military Prosecutor demands that the Defendant be sentenced to 6 (six) months in prison and an additional sentence of dismissal from military service. Especially in terms of corporal punishment, it is too light and does not reflect the justice that we all desire, because Article 87 paragraph (1) 2 in conjunction with paragraph (2) of the Criminal Procedure Code determines a maximum sentence of 2 (two) years and 8 (eight) months (SIAHAAN, 2021).

After the examination in the court session is declared complete, then the Chief Judge of the Session declares that the examination is closed with the condition that it can be reopened either by the authority of the Chief Justice of the Session because of

his position or at the request of the Public Prosecutor or the Defendant or his Legal Counsel by providing the reasons. On this occasion the judge held a deliberation to make a decision. Which deliberation is carried out after the defendant, witness, legal advisor, public prosecutor and the audience leave the courtroom as stipulated in the provisions of Article 182 paragraph (3) of the Criminal Procedure Code, while in the Military Court it is regulated in the provisions of Article 188 of Law Number 31 of 1997. In this case At the deliberation, the Chief Judge of the Session asked the oldest Member Judge a question and finally took the initiative to express his opinion on which act was clear because the examination by the Judge had made it clear that the person accused was guilty of the act.

If unanimous consensus cannot be reached in the deliberation of the panel of judges, then the provisions of Article 182 paragraph (6) of the Criminal Procedure Code in conjunction with Article 188 paragraph (4) of Law Number 31 of 1997 shall apply, which reads as follows, in principle the decision in the assembly deliberation is the result of consensus unanimous except if after serious efforts it cannot be achieved, then the following provisions apply, the decision is taken by majority vote and if this provision is not obtained, then the decision chosen is the opinion of the judge which is most favorable to the defendant (Srimudeni, 2006).

To pass a decision, the judge must first know the case objectively obtained by the judge from the examination process in court. This is because the end of a criminal case is a decision. As for the decision itself, it needs to be emphasized again here, that in the process of resolving criminal cases in court, the truth that must be upheld is the material truth (*materialele waarheid*), therefore the judge's decision must be based on the belief that the defendant in question is the culprit and can be accounted for. This conviction was obtained by the judge through evidence as regulated and determined in the law (Sulistiriyanto, 2011).

If the results of the theoretical discussion and juridical discussion are related to the process of examining and explaining the case as stipulated in the Decision of the Military Court II-09 Bandung Number PUT/067-K/PM.II-09/AD/III/2012, it can be concluded as follows: (1) Whereas basically in terms of theory and juridical basis governing court decisions, the birth of the Bandung Military Court II-09 decision is in accordance with the conditions as stipulated in the applicable rules (2) That, it turns out that the decision handed down by the Panel of Judges of the Military Court II-09 Bandung, in essence, is more severe than the demands of the Military Prosecutor. Likewise, the comments made on the Military Prosecutor's claim, especially the Panel of Judges' decisions, strongly disagree considering that the Panel of Judges at the Bandung District Court has imposed too light a sentence, this is due to the fact that the convict Pada Irvan Prasetya Nrp. 31060287430986 was only sentenced to 8 (eight) months in prison and dismissed from military service. Therefore, even if the maximum sentence imposed is rational. This is intended as a general preventive measure because the defendant's actions are very disgraceful.

#### **D. Conclusion**

Basically, the law is a regulation of social life that regulates and compels to ensure order in the association of human life in society. In addition, the law also

regulates each individual who has committed a crime or committed an act that is threatened by the Criminal Code, but not forever the individual can be sentenced, but the person must have been proven guilty legally and convincingly of committing the alleged crime. . The case that is the topic of discussion in this research is the crime of dissent in peacetime which is carried out repeatedly by a member of the military, therefore the settlement process is not carried out by the court in the general court environment but by the court in the military court environment, namely the military court II-09 Bandung. Basically, the enactment of the Military Court Law, namely Law Number 31 of 1997, is because the perpetrator is a member of the Military and this is legal because Law Number 31 of 1997 is a Special Criminal Law as stipulated in the provisions of Article 103 of the Criminal Code..

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