

## ***RATIO DECIDENDI* MILITARY COURT JUDGES IN DECIDING ON THE CRIMINAL ACT OF DESERTION (STUDY OF DECISION NUMBER 30-K/PM.I-02/AD/IV/2023, DECISION NUMBER 34-K/PM.I-02/AD/IV/2023)**

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### **Abstract**

Desertion is a criminal offense that causes significant harm to multiple parties, particularly the perpetrator, their family, their military unit, and the state, which has invested substantial resources in their education and training. This study examines the following issues: how desertion committed by members of the Indonesian National Armed Forces (TNI) is regulated under applicable law; how the principles of military necessity are applied in adjudicating desertion cases involving TNI personnel; and how the ratio decision of military court judges is implemented in such cases, based on Decision No. 30-K/PM.I-02/AD/IV/2023 and Decision No. 34-K/PM.102/AD/IV/2023. This research employs a normative legal approach. The findings indicate that the legal framework governing desertion by TNI members is regulated under Article 87 paragraphs (2) and (3) of the Indonesian Military Criminal Code (KUHPM). Article 87 paragraph (2) provides that desertion committed during peacetime is punishable by imprisonment for a maximum of 2 years and 8 months, while paragraph (3) provides that desertion committed during wartime is punishable by imprisonment for a maximum of 8 years and 6 months. However, the KUHPM contains several terms that give rise to multiple interpretations, particularly regarding the concept of peacetime. The principle of military necessity in adjudicating desertion cases involving TNI members is inseparable from three fundamental principles: the principle of unity of command, the principle of command responsibility, and the principle of military necessity itself. These principles form the basis for examining desertion cases involving active TNI personnel. The ratio decidendi of military court judges in these cases, as reflected in Decision No. 30-K/PM.I-02/AD/IV/2023 and Decision No. 34-K/PM.I-02/AD/IV/2023, shows that the panel of judges found the defendants guilty of committing desertion on the grounds that they intentionally carried out the act and deliberately ceased performing their duties as military personnel, and that the acts were committed during peacetime

**Keywords:** *TNI, Desertion, Military Court*

### **INTRODUCTION**

The crime of desertion is regulated in Chapter III of the Criminal Code under the title "Crimes," which is a way for a military member to withdraw from carrying out his/her service obligations. The crime of desertion is regulated in Article 87 of the Criminal Code, which reads as follows:

Convicted of desertion, a member of the army who:

1. Leaving with the intention of withdrawing permanently in fulfilling one's service obligations, avoiding the danger of war, going over to the enemy, or without the right to do so entering service in the army of another State or power.
2. Due to his/her fault or intentional absence in an unlawful manner during peacetime for more than thirty days and during wartime for more than four days.
3. Guilty of intentionally being unlawfully absent and therefore causing him to not participate at all or only partially in a trip that has been ordered as mentioned as stated in Article 85 No. 2 of the Criminal Code.

Currently, the crime of desertion is a problem that occurs and is carried out in military units, where a soldier leaves the unit without a valid reason and without permission from his superiors. Based on this description, the author includes 2 examples in this study, the first in the case of the Medan I-02 Military Court Decision Number 30-K / PM.I-02 / AD / IV / 2023 where in this case the Panel of Judges of the Medan I-02 Military Court

decided that the Defendant, namely Chairul Sudarmono Padang, Sergeant NRP 21080598390487, was legally and convincingly proven guilty of committing the crime of desertion in peacetime, sentencing the defendant to a principal sentence of 1 (one) year in prison and an additional sentence of being dismissed from military service. The second is in the case of the Medan Military Court Decision I-02 Number 34K/PM.I-02/AD/IV/2023 where in this case the Panel of Judges decided that the defendant Royandi Naibaho, Private NRP 31190385490697, was legally and convincingly proven guilty of committing the crime of desertion during peacetime, sentencing the defendant to a principal sentence of 10 months in prison and an additional sentence of dismissal from military service.

The crime of desertion in the military can occur due to various interrelated factors, both internal and external to the individual. One of the main causes is psychological factors, such as severe stress, mental disorders, or emotional distress resulting from challenging and high-risk assignments. Furthermore, family factors are also significant, especially when soldiers face domestic problems or the burden of responsibility as the family's breadwinner. Economic problems also contribute, such as dissatisfaction with salary or the desire to seek additional income outside the military. On the other hand, organizational factors also play a role, for example, when soldiers feel unappreciated, experience unfair treatment from superiors, or find themselves in an unhealthy work environment. A lack of understanding of military law and the sanctions for desertion is also a contributing factor, especially for new recruits who do not fully understand the legal consequences of leaving service without permission.

The process of resolving military crimes, especially desertion, is generally different from general crimes. The difference lies in the subject, namely that military crimes are committed by a military person as referred to in Article 4 Paragraph 1 of Law Number 34 of 2004 concerning the TNI, namely that soldiers are members of the TNI consisting of the Army, Navy, and Air Force, while general crimes are committed by pure civilians. When a TNI member deserts, the TNI member will be processed through military procedures, as this action is regulated in the Criminal Code (KUHP). Therefore, all investigation processes are carried out through the Military Criminal Justice System (SPPM) mechanism, with components (subsystems) consisting of the Superior with the Right to Punish, hereinafter referred to as *Ankum*, the Case Handing Officer, hereinafter referred to as *Papera*, the Military Police, the Military Auditor, the Military Judge, and the Military Correctional Officer. Each of these sections has duties and authorities that have been regulated in Law Number 31 of 1997 concerning Military Justice.

After knowing the military justice subsystem in following up on military criminal cases, just as with general courts, the judge is entitled to impose a sentence on the perpetrator of the crime based on evidence and the trial process, just as with the perpetrator of desertion, in this case, the judge has the power to pass a sentence on the perpetrator of desertion. In determining the decision, the basis of a judge is "For the Sake of Justice Based on the Almighty God". When making a decision, a judge must consider all aspects, from the need for caution and the avoidance of any inaccuracy, both formal and material, to the need for technical skill. Therefore, a judge cannot act as he pleases; he must also be accountable for his decision.

Applying criminal sanctions to members of the Indonesian National Armed Forces (TNI) who commit crimes, the role of judges in Military Courts as executors of judicial power certainly has several considerations that are used as reasons in deciding cases so that the decision reflects a sense of justice. In providing considerations for deciding a criminal case, it is hoped that judges will not judge from only one side so that there are appropriate things in the judge's decision whether the considerations are aggravating or mitigating the sentence, which underlie the judge's thinking, so that the judge reaches his decision. The judge's considerations are actually no less important than the judge's decision and it is precisely the considerations that are the spirit of the entire content of the decision, even a decision that does not contain sufficient considerations can be a reason for filing a legal action, either an appeal or cassation, which can give rise to the potential for the decision to be overturned by a higher court.

The process of sentencing a criminal by a judge to a perpetrator of a crime must basically take into account all aspects of the objective, namely as follows:

1. As an effort to protect society from the threat of a crime committed by the perpetrator;
2. As a repressive measure so that the imposition of criminal penalties will deter the perpetrator and prevent them from committing crimes in the future;
3. As a preventative measure to prevent the wider community from committing crimes like those committed by the perpetrators;
4. Preparing the community mentally to respond to a crime and the perpetrator of the crime, so that in time the perpetrator of the crime can be accepted in society.

The process of handing down a verdict by a judge is a complex and difficult one, requiring training, experience, and wisdom. In handing down a verdict, a judge must determine whether a defendant has committed a crime, while still relying on the evidence to determine the guilt of the perpetrator's actions. After receiving and examining a case, the judge will then issue a decision, known as a judge's verdict, a statement by a state official authorized to make the decision. Therefore, a judge's verdict is not solely based on legal provisions, but also on conscience. In handing down a sentence to a TNI member who deserts, the judge will consider both the good and bad aspects of the perpetrator of the crime of desertion.

Based on the background description above, the researcher is interested in further analyzing in the form of a thesis on "RATIO DECIDENDI OF MILITARY COURT JUDGES IN DECIDING ON THE CRIMINAL ACT OF DESERTION (Decision Number 30-K/PM.I-02/AD/IV/2023, Decision Number 34-K/PM.I-02/AD/IV/2023)".

## LITERATURE REVIEW

### A. Theory of Legal Certainty

Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely:

- 1) That the law is positive, meaning that positive law is legislation.
- 2) That the law is based on facts, meaning it is based on reality.
- 3) That the facts must be formulated in a clear way so as to avoid errors in interpretation, besides being easy to implement.
- 4) Postal Lawitive should not be easily changed.

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law, or more specifically, legislation. Based on this opinion, Gustav Radbruch believes that positive law, which regulates human interests in society, must always be obeyed, even if it is unjust.

The theory of legal certainty contains 2 (two) meanings, namely firstly the existence of general rules that make individuals know what actions they may or may not do, and secondly in the form of legal security for individuals from government arbitrariness because with the existence of general legal rules, individuals can know what the state may impose or do to individuals.

Based on the description of the theory of legal certainty above, the relationship or relevance of the theory of legal certainty to analyze the formulation of the first problem regarding the legal rules for the crime of desertion regulated in the Military Criminal Code.

### B. Law Enforcement Theory

According to Soerjono Soekanto, things that influence law enforcement include:

1. The legal factor itself or the regulation itself can be seen from the existence of statutory regulations, which are made by the government with the hope of a positive impact that will be obtained from law enforcement.
2. Law enforcement factors, namely the parties who form and implement the law. The term law enforcement includes those who are directly or indirectly involved in the field of law enforcement, such as: in the fields of justice, prosecution, police, legal and social services.
3. Factors of facilities or infrastructure that support law enforcement. The certainty of handling a case always depends on the input of resources provided in crime prevention and eradication programs.
4. Societal factors, namely the environmental factors in which the law applies and is implemented. Law enforcement originates from the community and aims to achieve peace within the community itself. The community can directly influence law enforcement. This can be seen in public opinion regarding the law.
5. Cultural factors, namely as a result of works, creativity, and feelings based on human will in social interactions. Culture or the legal system essentially encompasses the values that underlie the laws that apply to both law enforcers and justice seekers.

## METHOD

The type of research used in this study is normative legal research using supporting data. Normative legal research is an approach carried out based on primary raw materials, examining theoretical matters concerning legal principles, legal concepts, legal views and doctrines, regulations and legal systems using secondary data, including: principles, rules, norms and legal regulations contained in laws and other documents closely related to the research.

## **RESULTS AND DISCUSSION**

### **A. Legal regulations regarding the crime of desertion committed by TNI members**

The threat of the crime of desertion is regulated in Article 87 Paragraph (2) and Paragraph (3) of the Criminal Code. In Article 87 Paragraph (2) of the Criminal Code, the maximum prison sentence is 2 (two) years and 8 (eight) months for desertion committed during peacetime, and Article 87 Paragraph (3) of the Criminal Code, the maximum prison sentence is 8 (eight) years and 6 months for desertion committed during wartime. Thus, the legal process for the crime of desertion is criminal, because the criminal sentence is more than 3 months. For TNI soldiers who commit minor crimes, the case can be resolved through soldier disciplinary law. Regulations implemented within the military environment play a crucial role in maintaining the discipline and integrity of TNI members, while ensuring that each member understands the consequences of desertion. Law enforcement against soldiers who desert involves specific legal procedures, ranging from investigations by the Military Police to trials in military courts, which also have special authority to handle such cases, including the imposition of disciplinary sanctions and criminal penalties that can lead to dismissal from military service.

Based on the description, the crime of desertion is a purely military crime committed by a soldier because it is against the law and contrary to the law. When viewed from a justiciable perspective, Military Criminal Law (in the material and formal sense) is part of positive law, which applies to the justiciability of military justice which determines the basics and regulations regarding actions which are prohibited and mandatory and against violators are threatened with criminal penalties which determine in what cases and when violators can be held responsible for their actions and which also determine the method of prosecution, sentencing and implementation of criminal penalties, in order to achieve justice and legal order.

Conceptually, Article 87 of the Indonesian Criminal Code (KUHPM) distinguishes three forms of desertion. First, desertion with the intention of permanently withdrawing from service obligations, avoiding the dangers of war, defecting to the enemy, or entering the military service of another country. This formulation emphasizes the element of clear intent (permanent intent) and is considered morally and militarily a form of betrayal of a soldier's obligations. Second, absence without permission during peacetime for more than 30 days or during wartime for more than 4 days, whether due to error or intent. Third, absence that results in the failure to carry out a specific official trip. This construction demonstrates that military law views absence as a serious threat to the command structure and operational effectiveness.

When linked to empirical reality, desertion is not always born of malicious intent or betrayal. Psychological factors such as severe stress, depression, anxiety disorders, trauma from assignments, or emotional pressure due to family problems are the main triggers. In this context, the provisions of Article 87 of the Criminal Code tend not to differentiate proportionally between desertion motivated by permanent evasion and desertion motivated by psychological crisis. Although the element "due to one's own fault or intentionally" opens up room for analysis of culpability, in practice, evidence often emphasizes the objective fact of absence rather than exploring the perpetrator's mental state.

The time limits between peacetime (30 days) and wartime (4 days) in the Indonesian Criminal Code differ. This difference is understandable because in a war situation, any absence has the potential to endanger the safety of the unit and the nation. However, the problem is that the Indonesian Criminal Code itself does not provide a clear definition of "peacetime" and "wartime," leaving room for wide interpretation. From the perspective of the principle of legality, particularly the principle of *lex certa*, the formulation of elements that are not clearly defined has the potential to create legal uncertainty and disparity in their application.

When linked to the theory of legal certainty according to Gustav Radbruch, the regulation of desertion in Article 87 of the Military Criminal Code (KUHPM) can be analyzed through the four main elements that he put forward.

1. The law must be positive, meaning it must be enshrined in statutory regulations. In this context, desertion is explicitly regulated in the Criminal Code (KUHPM), thus qualifying as positive law binding on military personnel.
2. Laws must be based on facts or social realities. The regulation of a 30-day absence limit in peacetime and a 4-day absence limit in wartime reflects the reality of the differing needs for military discipline and preparedness in peacetime and wartime situations.
3. Radbruch emphasized that facts must be formulated clearly to avoid misunderstanding and to ensure ease of implementation. This is where the problem arises, as terms like "peacetime" are not explicitly defined in the Criminal Code and are only interpreted through Article 58 of the Criminal Code on states of war, potentially leading to multiple interpretations and reducing legal certainty.

4. Positive law must not be easily changed to maintain stability and predictability. Although the Criminal Code (KUHPM) is relatively stable as a legal document, stagnation without responsive updates to modern military conditions could actually diminish its relevance and effectiveness.

Based on the explanation above, it can be seen that desertion is the act of leaving military service without permission from a superior with the intention of not returning to carry out obligations as a member of the TNI, the crime of desertion committed by TNI members is regulated in the Criminal Code which applies specifically to TNI soldiers. The article that ensnares TNI members who commit desertion is Article 87 of the Criminal Code. The construction of this Article still has weaknesses because several terms, such as "peacetime", are not formulated explicitly so that they have the potential to cause differences in interpretation.

## **B. The principle or principle of military interest in deciding on the crime of desertion committed by TNI members**

The principles and characteristics of military life as stated in the General Explanation of Law Number 31 of 1997 are:

1. Principle of Unity of Command

In military life, with its organizational structure, a commander holds a central position and is fully responsible for his unit and his subordinates. Therefore, a commander is given the authority to refer cases in the settlement of criminal cases and is obliged to resolve Armed Forces Administrative disputes submitted by his subordinates through administrative efforts. In accordance with the principle of unity of command mentioned above, in Military Criminal Procedure Law there is no recognition of pre-trial and pre-prosecution. However, in Military Criminal Procedure Law and Military Administrative Procedure Law, there are institutions for compensation and rehabilitation. Simply put, the principle of unity of command is that in military life, with its organizational structure, a commander holds a central position and is fully responsible for his unit and his subordinates.

2. Principle Commander is responsible for his subordinates

The life order and organizational characteristics of the Armed Forces, the commander functions as a leader, teacher, father, and trainer, so a commander must be fully responsible for his unit and his subordinates. This principle is a continuation of the principle of unity of command.

Commanders who have a central position and are responsible for their subordinates will participate in the investigation of cases carried out by their subordinates. Besides being a form of responsibility, this also falls within the commander's authority, namely the authority to punish. Therefore, the relationship between superiors and subordinates in the military is very clear. Commanders play a crucial role as decision-makers. With both the right of command and the right to punish, commanders can determine what decisions will be made or what orders will be given to their subordinates.

3. The principle of military interests.

To maintain national defense and security, military interests take precedence over group and individual interests. However, specifically in the judicial process, military interests are always balanced with legal interests. When conducting legal proceedings against members of the Indonesian National Armed Forces (TNI), law enforcement officers within the TNI cannot solely consider legal interests; military interests must also be fully considered. The judicial process must ensure that law enforcement interests are balanced and aligned with national defense interests.

These three principles affirm that life and law enforcement in the military are based on a strong command structure, with the commander as the center of responsibility for the unit and its subordinates. The principles of unity of command and the principle of commander's responsibility demonstrate that commanders play a crucial role in fostering, supervising, and enforcing discipline, including in resolving cases involving soldiers. Meanwhile, the principle of military interests prioritizes national defense and security, but in the judicial process, this must be balanced with legal interests to ensure that discipline and justice are enforced in harmony.

General Principles of Military Crimes include:

1. Unitary Law for the Military.

The Criminal Code applies to the entire military, and unification is implemented regarding norms and sanctions. Unified law provides greater satisfaction with legal awareness and can prevent difficulties in practice.

2. Separate codification

Military Crimes are criminal acts that are only committed by a military person, because of their specific military nature, which are regulated in the Military Criminal Code (hereinafter referred to as the KUHPM) which can be divided into two parts, namely: pure military crimes, for example: Crimes in carrying out military operations, war obligations, the crime of desertion, crimes against various service obligations and mixed military crimes, for example: a military man who is deliberately armed to maintain security but instead uses the weapon to rebel.

3. Separate jurisdiction

The jurisdiction of military courts is not the same as that of general courts. This is primarily a result of the division of military command areas, where the command holders are the officers who refer cases to military courts. In an emergency, if the general courts are no longer able to function, it should be possible for military courts to accommodate them to try those who are supposed to be subject to military jurisdiction on the general judicial power.

4. Separate Criminal Procedure and Military Courts

Something special in resolving a case carried out by a military person, there is a big role for the commander concerned and this cannot be ignored, in fact there are times (for example in meeting areas) when it is given more priority than the role of law enforcement officers.

The role of the commander must also have limits, because as a country that upholds the law, without ignoring any interests, it is only natural that a balance is maintained between the principles of Unity of Command and "unity of prosecution" (de een en ondeelbaarheid van het parket).

5. Possibility of Settling a Criminal Act Through Disciplinary Law

The fundamental difference between a crime and a disciplinary offense is that a crime is generally perceived as disrupting the balance of society, a disruption that can only be remedied by imposing a penalty as a last resort (ultimum remedium). A disciplinary offense, on the other hand, is more of an inappropriate act, which can be "addressed" by means of a warning or a more educational punishment.

6. Not Recognizing Collective Punishment

Military criminal law does not recognize collective punishment, although some military crimes are only possible if two or more perpetrators are involved. For example, military rebellion, military disturbances, and so on. A group can also commit theft, jointly damage property, or even kidnapping, assault, and murder. However, each perpetrator must be held individually accountable for their actions.

This was also conveyed by Moch Faisal Salam that the resolution of cases of criminal acts of abuse sometimes in military criminal law does not recognize collective punishment if the abuse is carried out together. The same because in the punishment each perpetrator is only responsible for the actions he has committed.

Based on the above description, military criminal law has specific characteristics that distinguish it from general criminal law, where the KUHPM applies uniformly to all soldiers as a separate codification that regulates both pure and mixed military crimes, with its own jurisdiction and military court procedures. In this system, commanders play a crucial role in resolving cases, but remain constrained by the principle of the rule of law through a balance between the principles of unity of command and unity of prosecution. In addition, not all violations must be resolved through criminal prosecution, because certain violations can be handled through disciplinary law that is of a developmental nature, and each soldier can only be held criminally responsible individually, so that military criminal law does not recognize collective punishment even if the act is committed together.

**C. Ratio decidendi military court judge in deciding the crime of desertion based on Decision Number 30-K/PM.I-02/AD/IV/2023, Decision Number 34-K/PM.I-02/AD/IV/2023**

**1. Decision Number 30-K/PM.I-02/AD/IV/2023**

The panel of judges must consider the defendant's judgment before handing down a verdict. The judge's considerations are a crucial aspect of decision-making in criminal cases.<sup>1</sup> The following is an analysis of the judge's considerations regarding the elements of Article 87 Paragraph (1) 2 in conjunction with Paragraph (2) of the Criminal Code which were charged to the defendant:

1) The first element: Military.

<sup>1</sup>Ismaidar, et al, "Legal Politics in Judges' Considerations in Criminal Cases in Indonesia" Jurnal Terang, Vol, 1 No, 4 Year 2024, Pg 276

In this case, the Panel of Judges looked at the elements of the legal subject that must be carried out by an active TNI, and in this case, it was revealed in the trial facts that the defendant was an active TNI AD soldier who was on trial at Jasdram I/BB with the rank of Serka NRP 21080598390487 Position Baur Uji Kasjas Sikasjas. Therefore, the Panel of Judges considered that the first element in this Article had been fulfilled.

- 2) Second element: Those who are absent without permission due to their own fault or intentionally.

The original form of desertion was the military leaving without permission with the aim of permanently avoiding their duties.

In this case, the trial revealed that the defendant had left his duties starting January 9, 2023, without permission from the Head of the I/BB Military Command until the trial, and his whereabouts were unknown. Therefore, in this case, the defendant's actions were deliberate and not an act of abandonment by the military service.

- 3) The third element: In times of peace.

Regarding the meaning of peacetime, it is not regulated in the Criminal Code or other laws and regulations, so in this case the Judge interpreted the legal vacuum by looking at the provisions in Article 58 of the Criminal Code which explains:

That a unit is considered to be in a time of war, if the military authority orders the unit to take part in a military expedition, or to eradicate a hostile force, or to maintain the neutrality of the State, or to carry out a request for military assistance from the authorized authority in the event of a disorderly movement.

Departing from these provisions, the Judge interpreted that outside of the circumstances as mentioned above, it can be called in peacetime. As in the trial facts it was stated that the defendant was not carrying out preparations for military operations, then the defendant had fulfilled the third element. According to Sugiarto Totok in Astri Dewi, what is meant by peacetime means that the defendant or a member of the TNI is absent without permission, the Republic of Indonesia is in a state of peace or its unit is not carrying out its duties.

- 4) Fourth element: Longer than thirty days.

As the defendant left the service from January 9, 2023, until the defendant was dismissed on June 6, 2023, consecutively, the defendant in this case was absent from the service for more than 30 days. Therefore, the defendant has fulfilled the fourth element.

Based on the above description, it can be concluded that the defendant has been legally and convincingly proven to have committed the crime of desertion during peacetime as regulated in Article 87 of the Criminal Code. All elements of the crime have been cumulatively fulfilled, namely the defendant is an active TNI soldier, intentionally carried out absence without permission from an authorized superior, the act was carried out during peacetime, and lasted longer than thirty consecutive days.

## **2. Decision Number 34-K/PM.I-02/AD/IV/2023**

One of the important principles of a state based on the rule of law is the guarantee of the implementation of independent judicial power, free from the influence of other powers to administer justice to uphold law and justice. Judges are free to exercise their power to administer fair trials. In the decision regarding the defendant, the Panel of Judges considered the elements of Article 87 Paragraph (1) 2 in conjunction with Paragraph (2) of the Criminal Code in granting desertion to the defendant, the following is the analysis:

- 1) The first element: Military.

In this case, as is known, the defendant is an active military man as revealed in the trial facts, where the defendant served in Yonis 126/KC with the rank of Private NRP 31190385490697 Position Tabakpan 3 Ru 3 Ton II Kipan B, so in this case the defendant has fulfilled the first element.

- 2) Second element: Those who are absent without permission due to their own fault or intentionally

If a military person leaves his place of duty because he has received permission for leave, but then it turns out that he intends not to return to his place of duty forever, this action is an unlawful act even though his departure was with permission.

The defendant in this case revealed in court that the defendant initially left with 9 other personnel to leave the ship to purchase personal equipment and had been approved by Lieutenant Colonel Inf Dwi Widodo, but the defendant did not return after that and a search was also conducted on the defendant and it was revealed that the defendant left without permission from the unit because the defendant was afraid of being reported by the defendant's girlfriend. The defendant left the unit starting from November 15, 2022 until the trial was held. Therefore, the defendant has fulfilled the second element.

3) The third element: In times of peace.

In this case, the meaning of "in peacetime" is not explained in the Criminal Code or other laws and regulations. Therefore, in this case, the Panel of Judges interpreted Article 58 of the Criminal Code, which states:

That a unit is considered to be in a time of war, if the military authority orders the unit to take part in a military expedition, or to eradicate a hostile force, or to maintain the neutrality of the State, or to carry out a request for military assistance from the authorized authority in the event of a disorderly movement.

Based on the description of the Article, the Judge interpreted that outside of the circumstances mentioned in the Article, it could be said that "in peacetime," the defendant, based on the revealed facts, was not being prepared for military operations for war because the Republic of Indonesia was in a period of peace. Therefore, the defendant has fulfilled the third element.

4) Fourth element: Longer than thirty days

As a benchmark for determining absence, it is calculated from the time of absence at the roll call. In other matters from the important moment of not being present at the designated place to carry out the duties assigned to him. The trial facts revealed that the defendant had left the service starting from November 15, 2022 until the verdict was read on May 30, 2023 and the defendant carried out his actions consecutively which had exceeded 30 days and until now has not returned to the unit. Therefore, the defendant has fulfilled the elements of the fourth article.

Based on the above description, from the judge's considerations it can be concluded that the defendant has been legally and convincingly proven to have committed the crime of desertion during peacetime as regulated in Article 87 of the Criminal Code. The Panel of Judges has considered that all elements of the crime have been cumulatively fulfilled, namely the defendant is an active TNI soldier, intentionally carried out absence without permission from an authorized superior, the act was carried out during peacetime, and lasted longer than thirty consecutive days.

## CONCLUSION

1. The legal provisions for the crime of desertion committed by members of the Indonesian National Armed Forces (TNI) are regulated in Article 87 paragraphs (2) and (3) of the Indonesian Criminal Code (KUHPM). However, the KUHPM contains several phrases that give rise to interpretation, namely regarding peacetime. The absence of a clear definition of these two terms in the Military Criminal Code (KUHPM) has the potential to give rise to multiple interpretations and legal uncertainty. This contradicts the principle of *lex certa* in the principle of legality, which requires the formulation of the crime to be clear and unambiguous.
2. The principle or principle of military interest in deciding on the crime of desertion committed by TNI members cannot be separated from the 3 principles of military interest, namely: the principle of unity of command, the principle of commanders being responsible for their subordinates and the principle of military interest.
3. *Ratio decidendi* military court judges in deciding the crime of desertion based on Decision Number 30-K/PM.I-02/AD/IV/2023, Decision Number 34K/PM.I-02/AD/IV/2023 The Panel of Judges in both decisions sentenced the defendants to desertion on the grounds that the defendants committed their actions intentionally and had intentionally not carried out their duties as military soldiers, which actions were carried out during peacetime.

## Suggestion

The Criminal Code (KUHPM) should be revised or regulations issued that clearly define the phrase "peacetime," considering that there is currently no clear explanation, which could potentially lead to differences in interpretation in the future, even though judges have the authority to interpret it. Furthermore, in handling the crime of desertion, judges should not only focus on the fact that the defendant left the service, but must also consider and explicitly explain in their decision considerations the violation of the principle of unity of command, the principle of commander's responsibility, and the principle of military interests as fundamental principles in military law. Furthermore, in interpreting the phrase "peacetime," the Panel of Judges should involve expert testimony so that the resulting interpretation is more comprehensive, systematic, and in-depth, and does not rely solely on the judge's subjective understanding.

#### REFERENCES

- Ahmad Rifai. 2010. *Penemuan Hukum oleh Hakim Dalam Perspektif Hukum Progresif*, (Jakarta: Sinar Grafika)
- Astri Dewi Setyarini, dkk. 2023. "Pelanggaran Desersi Pada Prajurit Militer" *Jurnal Socius*, vol, 1 No, 5 Desember 2023
- Diah Arimbi, dkk. 2024. Analisis Putusan Pidana Militer No 196-K/PM-II-09/AD/XII/2021" *Jurnal Cendikia*, Vol, 1 No, 3
- Ismaidar, dkk. 2024. "Politik Hukum Yang Terdapat Pada Pertimbangan Hakim dalam Perkara Pidana di Indonesia" *Jurnal Terang*, Vol, 1 No, 4 Tahun
- Kasus Desersi Pada Putusan Nomor 34-K/PM.I-02/AD/IV/2023
- M. Dastin Meta Swandana. 2019. "Kewenangan Peradilan Militer Terhadap Penegakan Hukum Pada Perkara Koneksitas Yang Dilakukan Oleh Tentara Nasional Indonesia (TNI) *Jurnal Sekolah Tinggi Hukum Militer*
- Jimmy C. Sihotang. 2016. "Peniadaan, Pengurangan dan Pemberatan Pidana Pada Pelaku Tindak Pidana Militer" *Jurnal Lex Crimen*, Vol, V No, 5
- Muhammad Arin Sifa Al-Faidh, dkk. 2025. "Penjatuhan Pidana Pemberhentian Dengan Tidak Hormat Anggota TNI Pada Kasus Tindak Pidana Desersi" *Jurnal Rechtswetenschap*, Vol, 1 No 1
- Nanang Tomi Sitorus. 2023. *Hukum Pidana Militer*, (Deli Serdang: Universitas Medan Area Press).
- Novita Fitria Azzahra dan Irwan Triadi. 2019. Peran Regulasi Terhadap Anggota TNI Pelaku Tindak Pidana Desersi Dalam Perspektif Hukum Militer" *Jurnal MHI*, Vol, 5 No, 3 Tahun 2025, Hlm 521
- Nikmah Rosidah, *Hukum Peradilan Militer*, (Bandar Lampung: CV. Anugrah Utama Raharja)
- Patricia Carmila Apriliana Mai Sila, dkk. 2023. "Penjatuhan Sanksi Pidana Terhadap Prajurit TNI Sebagai Pelaku Tindak Pidana Desersi (Studi Putusan Pengadilan Militer III-14 Denpasar Nomor 06-K/PM-III-14/AD/III/2025
- Parluhutan Sagala, dkk., 2019. "Yurisdiksi Peradilan Militer dalam Kekuasaan Kehakiman di Indonesia" *Dilmatama*
- Ni Luh Ayu Widhiarcani Laksmidewi, dkk. 2024. "Kekhususan dalam Tahapan Penyerahan Perkara di Peradilan Militer" *Jurnal Pemuliaan Keadilan*, Vol, 1 No, 4 Oktober
- Peter Mahmud Marzuki. 2008. *Pengantar Ilmu Hukum*, Jakarta, Kencana Prenada Media Group
- Soerjono Soekanto. 2010. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta: Rajawali Pers.
- Sevriani Sembiring, 2021. *Putusan Bebas Dalam Hukum Pidana*, Cilacap: CV. Alinea Edumedia.
- Soerjono Soekanto. 2008. *Penelitian Hukum Normatif*, Jakarta, PT. Raja Grafindo Persada, 2008