



## Application of Criminal Sanctions Against Indonesian National Army Soldiers Perpetrators of the Crime of Desertion

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### **Abstract**

Soldiers of the Indonesian National Army (abbreviated as TNI) have been specially prepared to guard, protect and defend the security and sovereignty of the Unitary State of the Republic of Indonesia (NKRI). In carrying out their duties, TNI members are limited by military laws and regulations, so that all actions they carry out must be based on applicable laws and regulations. In order to guarantee and support the implementation of the TNI's important roles and tasks, special regulations have been made that apply to TNI members, in addition to general regulations. In carrying out their duties and obligations towards the state, a member of the TNI is not immune from legal problems, for example there are members of the TNI who commit a crime, namely the crime of desertion. Desertion is an act of withdrawing from carrying out TNI service obligations as regulated in Article 87 of the Military Criminal Code (KUHPM). The application of criminal sanctions in the criminal act of desertion committed by TNI soldiers intentionally in peacetime longer than 30 (thirty) days, then they can be sentenced as regulated in Article 87 paragraph (1) 2nd juncto paragraph (2) KUHPM with a maximum threat of imprisonment of 2 (two) years and 8 (eight) months.

**Keywords:** *Criminal Sanctions; Desertion; Indonesian National Army*

### **Introduction**

The Indonesian National Army (hereinafter abbreviated as TNI) consists of 3 (three) units, namely the TNI Army (TNI-AD), the TNI Navy (TNI-AL) and the TNI Air Force (TNI-AU). In carrying out all his responsibilities and obligations towards the state, a member of the TNI is not immune from all his problems, for example the presence of TNI officers who are involved in committing criminal acts. One form of criminal act committed by TNI personnel is desertion. Desertion is included as a pure military crime ( *zuiver militeire delict* ), namely a crime that can only be committed by a military person, because it is specifically military in nature. <sup>1</sup>Desertion is the act of withdrawing from carrying out TNI service obligations as regulated in Article 87 of the Military Criminal Code (KUHPM).

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<sup>1</sup> Moch. Faisal Salam, *Hukum Pidana Militer di Indonesia*, (Bandung: CV. Mandar Maju, 2006), p. 27.

TNI soldiers are part of the general public who are specially prepared to carry out the task of defending the state and nation. In carrying out their duties, TNI members are limited by military laws and regulations so that all actions they carry out must also be based on applicable laws and regulations. In order to be able to carry out heavy and very special duties and obligations, the TNI has been educated and trained to obey orders or decisions without arguing and to carry them out appropriately, efficiently and effectively. With the increasing level of public legal awareness, all TNI soldiers must be increasingly careful in their actions and actions so as not to commit acts that could violate applicable legal norms.

Indonesia is a country of law.<sup>2</sup> According to Grotius, law is a regulation of moral actions that guarantees justice.<sup>3</sup> Therefore, every citizen, official, ruler and state (legal) apparatus, including members of the TNI, must submit to and obey the applicable laws, both in their daily behavior, as well as inside or outside the service. Acts/actions under any pretext or form carried out by TNI individuals, whether individually or in groups, which are contrary to the law, official regulations, discipline and rules within the TNI, are essentially acts/actions that can damage the authority, dignity and the good name of the TNI itself. If these actions/actions are allowed to continue, they can cause unrest in society and hinder the implementation of development and development of TNI institutions.

TNI soldiers are Indonesian citizens who have been trained in war and are armed, tasked with maintaining the integrity of the defense and sovereignty of the territory of the Unitary State of the Republic of Indonesia. However, in carrying out their duties, there are individuals who are members of the TNI who commit acts that violate the law which fall into the category of criminal acts. Criminal acts committed by TNI members are included in special criminal acts, the specificity of which lies in certain jurisdictions, applies to TNI groups and those who are equated with TNI members (for example; mobilisans, titular military and foreign military).<sup>4</sup>

TNI soldiers are people who are educated, trained and prepared to fight. Indonesian citizens who are inaugurated into the TNI in carrying out their duties, apart from obeying the values of Pancasila, Sapta Marga, the Soldier's Oath and the 8 (eight) TNI Obligations, are required to always obey and adhere to all statutory regulations that apply specifically to TNI members. In order to guarantee and support the implementation of the TNI's important roles and tasks, special regulations have been made that apply to TNI members, in addition to general regulations. Regulations that are special in nature and apply to members of the TNI are called Military Criminal Law. Legislation that is specific to TNI members, for example: the Military Criminal Code (KUHPM), Law Number 25 of 2014 concerning Military Discipline Law and other regulations relating to the lives of TNI soldiers, as well as general legislation such as the Criminal Code and statutory regulations that regulate certain criminal acts (special criminal acts). This is a regulation that should be obeyed by every TNI member, whether enlisted, non-commissioned officer or officer, so that TNI soldiers in carrying out their duties do not conflict with and harm TNI agencies.<sup>5</sup>

Regulations regarding criminal acts committed by individual members of the TNI are contained in the Military Criminal Code (KUHPM), including the criminal acts of desertion, holding weapons of war, leaving a post during war, and so on. If a TNI member commits a criminal act of desertion in peacetime, then the resolution and enforcement of the law is subject to the KUHPM, Law Number 31 of 1997 concerning Military Justice and other statutory regulations that apply and are binding on every member of the TNI. Every member of the TNI must submit to and obey the legal provisions that apply to the military, including; The Military Criminal Code (KUHPM), Law Number 25 of 2014 concerning Military Discipline Law (KUHDM) and other regulations that are binding on military members. Military legal regulations are applied to enlisted officers, non-commissioned officers and officers who commit acts

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<sup>2</sup>Indonesia, *1945 Constitution*, Article 1 paragraph (3).

<sup>3</sup>Subandi Al Marsudi, *Pengantar Ilmu Hukum*, (Bogor: FH-Unpak, 2003), p. 13.

<sup>4</sup>Moch. Faisal Salam, *Op.Cit.*, p. 26.

<sup>5</sup>Kadek Wijana, I Made Sepud dan Anak Agung Sagung Laksmi Dewi, "Peradilan Tindak Pidana Korupsi Bagi Anggota Militer," *Jurnal Analogi Hukum*, Fakultas Hukum Universitas Warmadewa, Denpasar, Vol. 2, No. 3, Tahun 2020, p. 404-405. .

that are detrimental to the unit or the general public. However, as good citizens, every member of the TNI is also subject to the provisions of positive law that apply in Indonesia, for example; A member of the TNI must also obey traffic regulations, pay taxes, have a National Identity Card (KTP), etc.

### **Research Methods**

This research is descriptive analysis, namely that the discussion is carried out by presenting and explaining (explaining) the data in a complete, detailed and systematic manner, then the data is compiled, processed and analyzed based on theories in law and applicable legislation. The type of research used in legal writing is normative legal research, which is legal research carried out by examining library materials or secondary data.<sup>6</sup> This normative research is supported by empirical research if necessary to obtain primary data. The data collection technique used in this research is through library *research*.

### **Analysis and Discussion**

#### **Definition of Criminal Acts**

The legislators have used the words *strafbaar feit* to refer to what is known as a "criminal act" in the Criminal Code (KUHP) without providing any explanation regarding what is actually meant by the words *strafbaar feit*.<sup>7</sup> The word *feit* itself in Dutch means "part of a reality" or *een gedeelte van de werkelijkheid*, while *strafbaar feit* can be translated as "part of a reality that can be punished", which of course is not correct because later you will know that What can be punished is actually the human being as a person and not the reality, act or action. Therefore, as has been said above, if the legislator did not provide an explanation regarding what he actually meant by the words *strafbaar feit*, then it *arises* in in doctrine as an opinion about what is actually meant by *strafbaar feit*.

Hezewinkel-Suringa for example, they have made a general formulation of *strafbaar feit* as "a human behavior which at a certain time has been rejected in a certain social life and is considered as behavior that must be eliminated by criminal law by using the means coercive nature contained therein". Older writers such as Van Hamel have defined *strafbaar feit* as "an attack or a threat to the rights of others" which Hazewinkel-suringa has deemed inappropriate. According to Pompe, the word *strafbaar feit* can theoretically be formulated as "a violation of norms (disruption of legal order) which is intentionally or unintentionally committed by a perpetrator, where the imposition of punishment on the perpetrator is necessary for the maintenance of legal order and the guarantee of public interest" (*de nomovertreding (verstoring der rechtsorde), waaraan de overtreder schuld heft en waarvan de bestraffing dienstig is voor de handhaving der rechts orde en de behartiging van het algemeen welzijn*)<sup>8</sup>

Dividing a group of objects or people into certain types or classifying them can be very varied according to the wishes of the person who classifies or groups them, namely according to the basis of what is desired, as is the case with divisions in criminal acts.<sup>9</sup> The Criminal Code itself has classified criminal acts or offenses into two large groups, namely in the second and third books into groups of crimes and violations, respectively. Then the chapters are grouped according to the targets that the Criminal Code aims to protect against these criminal acts. For example, Chapter I of Book Two is Crimes Against State Security, thus this is a group of criminal acts whose target is state security.<sup>10</sup>

<sup>6</sup> Soerjono Soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Universitas Indonesia Press, 2010), p. 13-14.

<sup>7</sup> Lamintang dan Franciscus Theojunior Laminating, *Dasar-dasar Hukum Pidana di Indonesia*, (Jakarta: Sinar Grafika, 2014), p. 179.

<sup>8</sup> *Ibid.*

<sup>9</sup> Teguh Prasetyo, *Hukum Pidana*, (Jakarta: PT Raja Grafindo Persada, 2010), p. 57..

<sup>10</sup> *Ibid.*, p. 58.

## Definition of Criminal Offenses Desertion

Criminal acts according to the Criminal Code system are divided into crimes (*misdrifven*) and violations (*overtredingen*). The division into these two types is not clearly determined in an Article of the Criminal Code but is considered to be so, and apparently, among other things, from Articles 4, 5, 39, 45 and 53 of book 1. Book II regulates crimes and Book III deals with violations.<sup>11</sup> According to MvT The division into these two types is based on principle differences. It is said that crimes are *rechtsdelicten*, namely acts which, although not specified in the law, are considered criminal acts as *onrecht*, as acts that are contrary to the legal order.<sup>12</sup> Violations on the other hand are *wetsdelicten*, namely acts whose unlawful nature can only be discovered after a law determines that. Before wetboek v. *Strafrecht* came into effect, this view was opposed. It was stated, among other things, that there were violations which, before the existence of the *wet provisions*, were already felt to be inappropriate acts, for example Article 489 *straatschending* or *baldadigheid* (mischief); Article 494 6, namely creating obstacles on public roads; Article 503 disturbs well-being at night (*nachtrus*). Hence the view in above, which is known in the literature as a qualitative difference between crimes and violations, has now been largely abandoned and replaced with the view that there is only a quantitative difference (regarding the severity or lightness of the criminal threat) between crimes and violations.

Military criminal acts are criminal acts committed by the legal subject, namely the military. This kind of crime is called a pure military crime (*zuiver militaire delict*). A pure military crime is a crime that is only committed by a military person, because it is specific to the military.<sup>13</sup> Example: a military person in a state of war deliberately surrenders all or part of a fortified post to the enemy without making any effort to defend it as required or required of him (Article 73 of the Criminal Code). The criminal act of desertion as regulated in Article 87 of the Military Criminal Code (KUHPM); criminal acts of *insubordination* as regulated in Articles 105-109 of the Criminal Code and others. This criminal act of *insubordination* is when a subordinate actually threatens violence directed at his superior or commander. This real action can take the form of an action and can also be a gesture or expression. The crime of leaving a guard post as regulated in Article 118 of the Criminal Code. I mean, A guard who leaves his post with all of them, does not carry out a task that is mandatory for him and he is unable to carry out his duties as a guard properly is threatened with a maximum prison sentence of four years.<sup>14</sup>

Criminal acts committed by members of the TNI are purely military based on regulations relating to the military. TNI members who commit purely military crimes as stated in the military criminal law include crimes namely: crimes against state security; crimes in the performance of war obligations, crimes of withdrawing from the unit in the performance of service obligations (desertion); crimes of service, crimes of theft, fraud and interception, crimes of damaging, destroying or eliminating military equipment.

A mixed military criminal offense (*germengde militaire delict*) is a criminal offense involving a connection case, meaning a criminal act committed jointly between civilians and the military, which in this case is based on military law and the Criminal Code. Example: criminal acts of theft carried out in collaboration between civilians and the military; the crime of murder where the victim is a civilian; and others. This mixed criminal act always involves legal subjects, namely civilians, both perpetrators and victims of criminal acts.

One type of criminal act that is the focus of discussion in this research is the crime of desertion. This criminal act of desertion is an example of a pure criminal act committed by a military person. Desertion is the absence of a military person without the permission of his immediate superior, at a place

<sup>11</sup> Moeljatno, *Asas-asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2015), p. 78.

<sup>12</sup> *Ibid.*

<sup>13</sup> Moch. Faisal Salam, *Op.Cit.*, p. 27.

<sup>14</sup> Bisdan Sigalingging, "Tindak Pidana Desersi Menurut Hukum Pidana Militer", available at <http://bisdan-sigalingging.blogspot.com/2011/09/tindak-pidana-desersi-menurut-Hukum.html>, accessed on 12 October 2023.

and time determined by the service, by running away from the unit and leaving military service, or leaving by leaving, running away without permission. This action is an act that should not occur in military life. The term desertion contained in the KUHPM is regulated in Chapter III concerning Crimes which are a Way for a Military Person to Withdraw from Carrying Out Service Obligations.<sup>15</sup>

The act of absence of a military member at a place to carry out official duties is determined to be a crime, because the appreciation of discipline is a very urgent part of military life because discipline is the backbone of military life. This is different from the life of non-military organizations, that this act is not a crime, but rather a violation of organizational discipline. The definition of going away 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 is supposed to be in order to fulfill the service obligations assigned to it; What is called absence is not being present at the place or places.

Outside military organizations, acts (acts) of absence from a place to carry out service are generally not determined to be a crime. In military life, this needs to be determined, because of the appreciation of discipline is the backbone of military life. Just because of certain considerations and/or because of its light nature, the possibility is still open to settle the case under military disciplinary law (Article 2 KUHPM), without eliminating the right to prosecution under criminal law if deemed necessary (Article 52 KUHPM). In the practice of imposing disciplinary punishment, cases such as those mentioned above often occur (impure disciplinary violations) are legally disciplined by the Anku (superiors who have the right to punish / disciplinary judges). Especially for Anku who was not assigned as Papera, but did not immediately notify the Military Prosecutor or Prosecutor's officials. Incidents like this are very unfortunate, because they can be interpreted as eliminating prosecutions regulated by law, even though the imposition of disciplinary punishment itself is an act of enforcing the law. So on one party enforces the law, but in the other party commits an act that is not in accordance with the law.<sup>16</sup>

### **Causal Factors and Impact of Crime Desertion**

The essence of the criminal act of desertion must be interpreted to mean that the soldier who commits desertion must reflect the attitude that he no longer has any desire to be in military service.<sup>17</sup> It can be understood that the essence of the criminal act of desertion is not just the act of leaving service without permission within a 30 day period. Rather, it must be interpreted that the essence of the act of desertion contains the intention of the perpetrator's attitude and desire to withdraw from his service obligations and therefore it must be interpreted that the soldier contains a will or wish that he no longer has the desire to remain in military service. This must be understood by law enforcers within the TNI, especially military judges, so that when examining and adjudicating desertion cases they can make decisions that are appropriate and fair and beneficial for the interests of developing military units.

It cannot be denied that in reality, it often happens that a soldier's motivation for deserting is due to fear of his seniors due to a mistake, so he chooses to leave service because if he is in the unit he will face harsh action from his seniors. Another thing is that because he has a lot of debt here and there, he prefers to leave the unit rather than solve the problem, and there are also many other motivations.<sup>18</sup>

The factors that cause the crime of desertion can be classified into 2 (two) types, namely: 1) External factors include: Striking differences in social status; Involved in extramarital affairs/having another dream woman (WIL); Bored with rules/want to be free; War trauma; Having a lot of debt; Glared at other people's economic conditions, 2) Internal factors include: Lack of mental development (b intal);

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<sup>15</sup>*Ibid.*

<sup>16</sup> S.R. Sianturi, *Hukum Pidana Militer di Indonesia*, (Jakarta: Badan Pembinaan Hukum Nasional Indonesia, 2010), p. 257-258.

<sup>17</sup> Criminal Law, "Desersi", available at [paper-law-pidana.blogspot.com](http://paper-law-pidana.blogspot.com), accessed on 12 October 2023.

<sup>18</sup>*Ibid.*

Leadership crisis; Family separation. Meanwhile, to prevent criminal cases occurring within the TNI, each unit should: increase the effectiveness of embedded supervision or internal control as one of the command functions ; carry out personnel development and mental development programs to increase soldiers' compliance, devotion and discipline towards religious, ethical and moral teachings as well as legal regulations and rules; carry out an evaluation of the factors that cause cases to occur, so that they can be used as material in efforts to prevent and overcome them; take firm action against TNI soldiers involved in criminal cases in accordance with applicable legal provisions and avoid a protracted resolution process .

Desertion is the absence of a military person without the permission of his immediate superior, at a place and time determined by the service, by running away from the unit and leaving military service, or leaving by leaving, running away without permission. This action is an act that should not occur in military life. In carrying out their duties, members of the Indonesian National Army (TNI) are prohibited from leaving their duty area without the leadership's permission. If TNI members run away or leave their duty area without the leadership's permission, it will have an impact, both related to their main duties, impacts that affect performance, as well as impact affecting other personnel. These impacts include: 1) The impact on the unit if there are TNI military members who desert: it is detrimental and destroys the integrity of the unit; illustrating the fragile mentality and low level of discipline in the unit; m described the personnel development program in the unit as not running well. 2) The impact on the unit if it tolerates and does not take firm action against TNI members who desert: the condition of the unit is not good; low discipline and work ethic within the unit ; and there is no legal certainty so that it does not have a deterrent effect on members who desert.

### Of Criminal Sanctions in Criminal Offenses

*monistic* view, expressed by Simon, who formulated *strafbaar feit* as "*e ene strafbaar gestelde, onrechtmatige, met sculd in verband staande handeling van een toerekening vatbaar person*" (an act that is legally threatened with punishment, contrary to law, committed by a guilty person and that person is considered responsible for his actions). According to *monism*, the elements of *strafbaar feit* include both action elements which are commonly called objective elements, m as well as the manufacturing element, which is commonly called the subjective element. Therefore, by mixing the elements of the act and the elements of the maker, it can be concluded that *strafbaar feit* are the same as the conditions for criminal imposition, so that it is as if it is assumed that if *a strafbaar feit occurs* , then the perpetrator can definitely be punished.<sup>19</sup>

According to AZ Abidin, Professor of Criminal Law, Faculty of Law, Hasanuddin University, stated that the *monistic school* of *strafbaar feit* adherents are the majority throughout the world, viewing the element of committing an offense as part of *strafbaar feit* .<sup>20</sup> *Bestanddelen* a *strafbaar feit* is the core part mentioned by the Criminal Law, which must be included in the Public Prosecutor's accusation letter and must be proven. On the other hand, *elements* are the conditions for criminalization of acts and perpetrators based on the general section of the Criminal Code and general legal principles. If Van Bemmelen uses the terms *bestanddelen* and *elementen*, then D. Hazewinkel-Suringga uses the terms *samenstellende elementen* or *constitutieve bestanddelen* elements of offenses which are mentioned by the law, while for *elements* which are not mentioned but not recognized in the teachings of law they are called *stilzwijgende elementen* or elements of the offense that were received secretly.

The criminal act of desertion in the provisions of Article 87 paragraph (1) 2 of the KUHPM states that those who, through their fault or intentionally, are absent without permission during a peaceful period

<sup>19</sup> Muladi, *Pertanggungjawaban Pidana Korporasi*, (Jakarta: Kencana Prenada Media, 2010), p. 63.

<sup>20</sup>*Ibid* ., p. 64

longer than thirty days.<sup>21</sup> Based on Article 87 paragraph (1) 2, there are 5 (five) elements of the crime of desertion, namely:

1. The military is the armed forces of a country and everything related to the armed forces. The military can also be defined as an organization authorized by the state to use force, including weapons, to defend its nation or to attack other countries<sup>22</sup>.
2. Deliberately means wanting and knowing. This means that someone who carries out an action intentionally must intend and be aware of that action and/or its consequences. So it can be said that intentionally means wanting and knowing what to do. The person who commits an act intentionally intends the act and in addition knows or is aware of what is being done and the consequences that will arise from it.<sup>23</sup>
3. Absence without permission is a military member who deliberately runs away from his service or from his obligations without asking permission from his commander, or can be said to be desertion.
4. In times of peace, the military leaves the Unitary State of the Republic of Indonesia (NKRI) in a safe and peaceful condition.
5. Longer than thirty days is the act of a military member leaving the unit within a minimum period of 30 consecutive days or withdrawing permanently.

The criminal act of desertion is a criminal act that is specifically committed by a military person because it is unlawful and contrary to the law, especially the military criminal law. This criminal act of desertion is regulated in Article 87 of the Criminal Code, namely: <sup>24</sup>1) Threatened with desertion, the military: 1st, who leaves with the intention of permanently withdrawing from his service obligations, avoiding the danger of war, crossing over to the enemy or entering military service in a country or other power without justification for that. Second, those who, due to their fault or intentionally, are absent without permission in times of peace longer than 30 (thirty) days, in times of war longer than four days. 3rd, who deliberately makes an absence without permission and therefore does not participate in carrying out part or all of an ordered trip, as described in Article 85 2nd. 2) Desertion committed during peacetime is punishable by a maximum prison sentence of two years and eight months, and 3) Desertion committed during war time is punishable by a maximum prison sentence of eight years and six months.

Article 87 paragraph (1) 2 of the KUHPM confirms that those who are guilty or intentionally absent without permission in times of peace longer than 30 (thirty) days, in times of war longer than four days. Based on this article, it can be understood that the time limit for the crime of desertion is thirty days. For desertion carried out in accordance with Article 87 of the Criminal Code, the sanctions are imprisonment and dismissal of military members, because there are criminal threats in that article. If the absence is less than 30 (thirty) days or at least one day then it cannot be said to be a criminal act of desertion but is said to be absent without permission which can be resolved according to military disciplinary law (for example due to late attendance in a military unit. Absence without permission One day's permit here is 1 x 24 hours. As a benchmark for determining absence, it is calculated starting from not being present at the roll call, or when it is necessary/important, not being present at the designated place to carry out the duties assigned to him. <sup>25</sup>Administratively, based on the implementation instructions, it is stated that desertions that last more than 30 (thirty) days or at least on the 31st day are declared desertions. The desertion referred to here is that which is threatened with criminal penalties and dismissal is not resolved by military disciplinary law because it has been more than 30 (thirty) days or at least the 31st day since desertion was declared.

<sup>21</sup>[http:// Islamic law-pidana.blogspot.com](http://Islamic-law-pidana.blogspot.com), accessed on 12 July 20 23.

<sup>22</sup>Literature Review, "Penjelasan Militer", available at [www.kajian library.com](http://www.kajian library.com), accessed 13 October 20 23.

<sup>23</sup>Sergie Z ainovsky, "penjelasan Desersi Militer", available at [www.sergie-zainovsky.blogspot.com](http://www.sergie-zainovsky.blogspot.com), August 13 20 23.

<sup>24</sup>S.R. \_ Sianturi, *Op.Cit.*, p. 272.

<sup>25</sup>*Ibid.*

TNI members who will be sentenced to disciplinary action must fulfill the requirements set out in the provisions of Article 5 of Law Number 25 of 2014 concerning Military Discipline (hereinafter abbreviated to the TNI Soldier Discipline Law). Article 5 of the Military Discipline Law emphasizes that a violation of soldier discipline is serious disobedience and disobedience on the part of a soldier who adheres to the Sapta Marga and the Soldier's Oath to carry out duties and obligations in accordance with the rules or regimen of soldier life. The form of criminal liability for military members who commit criminal acts can be resolved according to disciplinary law or the imposition of criminal sanctions through the Military Court. Military Disciplinary Punishment is an educational action for a military person who is sentenced to punishment whose aim is to act as military guidance (discipline). Meanwhile, military punishment is more of a combination of military education and deterrence, as long as the convict is not dismissed from military service.

The application of criminal sanctions in criminal acts of desertion committed by TNI individuals in peacetime is that the person concerned can be sentenced to disciplinary punishment as regulated in Article 9 of Law Number 25 of 2014 concerning Military Discipline Law, namely in the form of ; reprimand, light detention for a maximum of 14 (fourteen) days and serious detention for a maximum of 21 (twenty one) days, if the criminal act of desertion is so light in nature and does not constitute a criminal act, but is contrary to official orders or acts that are not in accordance with the soldier's way of life (violation of discipline), so that the case can be resolved in outside court .<sup>26</sup>If the criminal act of desertion committed by a member of the TNI-AD is carried out intentionally during a peaceful period longer than 30 (thirty) days, then he or she can be sentenced as regulated in Article 87 paragraph (1) 2nd in conjunction with *paragraph* (2) KUHPM with a maximum penalty of imprisonment of 2 (two) years and 8 (eight) months. What is meant by an act that violates criminal legislation that is so light in nature includes: 1) All forms of criminal acts that are classified in related laws and regulations which carry a maximum penalty of imprisonment of 3 (three) months or imprisonment of a maximum of 6 (six) month; 2) The case is simple and easy to prove; 3) The criminal act that occurred did not result in disruption of military interests and/or public interests; and 4) Criminal action for absence without permission during peacetime for a maximum of 4 (four) days.

## **Conclusion**

The application of criminal sanctions in criminal acts of desertion committed by TNI soldiers is that the person concerned can be sentenced to disciplinary punishment as regulated in Article 9 of Law Number 25 of 2014 concerning Military Discipline Law, namely in the form of ; reprimand, light detention for a maximum of 14 (fourteen) days and serious detention for a maximum of 21 (twenty one) days, if the criminal act of desertion is so light in nature and does not constitute a criminal act, but is contrary to official orders or acts that are not in accordance with the soldier's way of life (violation of discipline), so that the case can be resolved in outside court . If the criminal act of desertion is committed by TNI personnel If this is done intentionally during a peaceful period longer than 30 (thirty) days, then he can be sentenced as regulated in Article 87 paragraph (1) 2 in conjunction with paragraph (2) of the Criminal Code with a maximum penalty of imprisonment of 2 (two) years. 8 (eight) months. The application of punishment in criminal acts is in accordance with the provisions of positive law which regulate criminal acts of desertion committed in peacetime, namely as regulated in Article 87 paragraph (1) 2nd in conjunction with paragraph (2) of the Criminal Code.

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<sup>26</sup> Amiroedin Sjarif, *Hukum Disiplin Militer Indonesia*, (Jakarta: PT Rineka Cipta, 1996), p. 21.



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