

# Legal Settlement of The Crime of Desertion in Absentia in The Jurisdiction of Military Court I-02

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## ABSTRACT

One type of criminal offense that is often committed by Indonesian National Army (TNI) Soldiers is the crime of desertion as regulated in Law Number 39 of 1947 concerning the Military Criminal Code (KUHPM) precisely in Article 87 which is an act committed by a TNI Soldier to leave military service without superior permission, at a specified time and place. The crime of desertion has the main characteristic of unauthorized absence committed by an army person at a place. The absence can be in the form of traveling to a place, hiding oneself, crossing the enemy, entering the military service of another country, or deliberately making oneself left behind. The settlement of cases of desertion crimes often finds several problems, one of which is that the person who committed the crime of desertion cannot be found, which causes the examination process to be carried out in the absence of the defendant (In Absentia). In Absentia, an examination is carried out so that the case is resolved quickly to uphold the discipline of soldiers and maintain the integrity of the troops. Including the case of the case submission that was not examined because from the beginning, the defendant fled and was not found again within 6 (six) consecutive months from the date of submission of the case file and 3 (three) consecutive summons efforts have been made. An examination can be conducted and decided without the defendant's presence in court.

**Keywords:** Desertion, In Absentia, Military.

## I. Introduction

The Indonesian National Army (TNI) is a pillar of state sovereignty tasked with maintaining and defending the security and sovereignty of a country. As stated in the Law of the Republic of Indonesia No. 34 of 2004 concerning the Indonesian National Army states that the TNI is a means of defense of the Unitary State of the Republic of Indonesia, which has the task of carrying out national defense policies in upholding state sovereignty, maintaining territorial integrity and protecting the safety of the nation. So, as the backbone of national defense, military institutions are required to guarantee their soldiers' discipline and readiness in facing all threats to the country's security and safety (Shah, 2021). In this context, the military justice system must enforce discipline and try every offense committed by TNI soldiers, including the crime of desertion. The Military Court has unique jurisdiction to handle cases of violations of the law committed by the TNI, and the judicial process is subject to Law Number 31 of 1997 concerning Military Justice. Every member of the TNI must comply with the provisions of laws and regulations applicable to the military, such as the Military Criminal Code (KUHPM), the Military Discipline Code (KUHDH), the Military Discipline Regulations (PDM), and

other regulations. Article 64 of Law of the Republic of Indonesia No. 34 of 2004 states that Military Law is fostered and developed by the government to benefit the implementation of national defense. So, if soldiers do not comply with the regulations that apply to the military, these soldiers can be said to have committed military crimes. One of the military crimes that TNI Soldiers often commit in the jurisdiction of Military Court I-02 Medan is the Crime of Desertion.

Desertion is one of the crimes that often occur in the military environment. As stipulated in Article 87 paragraph (1) of KUHPM, desertion is one of the criminal offenses committed by TNI soldiers who intentionally leave the military service without valid permission. This crime is considered serious because it can disrupt discipline and order in military institutions dependent on obedience and loyalty. As well as the soldier's commitment to the state's duty. The crime of desertion is also often resolved through the In Absentia trial process. This process is carried out when the defendant is not present in court, either due to intentional absence or due to the unknown whereabouts of the defendant. The resolution of desertion crimes in absentia is regulated in military legislation as a solution to ensure that the legal process continues even though the defendant cannot be present.

The regulation regarding the In Absentia trial is regulated in Article 143 of the Military Justice Law, which states that cases of desertion as referred to in the KUHPM where the defendant has absconded and has not been found again within 6 (six) consecutive months and has been summoned 3 (three) times in a row legally, but does not appear in court without reason, can be examined and decided without the presence of the defendant. This means that desertion cases can be settled in absentia if they fulfill the elements contained in Article 143 of the Military Justice Law. Thus, in the case of desertion in absentia, the legal process will continue even though the defendant does not appear in court after a legal summons has been made.

The underlying principle of an In Absentia hearing is that the legal process should not be disrupted or impeded simply because of the absence of the accused. This is based on the principle that the law must be consistently enforced to maintain the stability and integrity of the legal system in the military. Law No. 31 of 1997 on Military Justice explains that the settlement of criminal cases occurring within the Armed Forces of the Republic of Indonesia consists of several stages: investigation, case submission, and trial examination. In Absentia, a trial is a solution to ensure that the crime of desertion is still punished. In resolving the crime of desertion in absentia, military law refers to several regulations that support the trial mechanism, such as the Military Criminal Code (KUHPM), which is the primary basis, where Article 86 of the KUHPM regulates criminal sanctions for soldiers who commit the crime of desertion in absentia and Law Number 31 of 1997 concerning Military Justice provides authority for military courts to conduct trials in absentia if the defendant cannot appear after being legally summoned.

## II. Research Method

The approach used by the author in discussing the problems of this research is the Normative Juridical Approach. The Normative Juridical Approach is a legal research method that focuses on the study of legal documents (Made Pasek Diantha, 2016), such as the Military Criminal Code (KUHPM), which is the basis for resolving the crime of desertion in absentia, Law Number 31 of 1997 concerning Military Justice which regulates the procedures for In Absentia trials as well as applicable legal norms or rules related to this research. This approach aims to review and analyze laws, regulations, and legal concepts relevant to a particular legal problem and to understand the legal basis and norms that apply in settling desertion cases. This type of research also uses descriptive research to provide a comprehensive picture of the settlement of the crime of desertion in absentia (Wibowo, 2023) in the jurisdiction of Military Court I-02 Medan. Thus, this method will assist in developing recommendations or solutions that are more effective for the settlement of the crime of desertion in absentia in the military environment. The fundamental approach of this research is critical and deductive. Critical and deductive thinking is a way of thinking that, in a study, understands the concept of a problem and can be solved. The conclusion is drawn from a general nature that has been proven to be

accurate, and the conclusion is aimed at something specific; this analysis is intended to provide an argument for the results of the research it has done.

### III. Result and Discussion

The crime of desertion that is examined in absentia is a crime in which the defendant has left the service without valid authorization consecutively for longer than 30 days in peacetime and more prolonged than 4 days in wartime (Djoko Prakoso, 1994) in Purnomo (2025) and is not found so that the examination is carried out without the presence of the defendant. Law No. 31 of 1997 Article 143 states that in criminal cases where the defendant has absconded and has not been found again within 6 (6) months in a row and has been summoned 3 (three) times in a row legally but does not appear in court without a reason can then be examined and decided without the presence of the defendant. Examination without the presence of the defendant (In Absentia) is an examination carried out so that the case can be resolved quickly for the sake of upholding soldier discipline to maintain the integrity of the troops, including, in this case, the delegation of cases where the defendant has never been examined because from the beginning he has fled and has not been found. In the case of the criminal offense of desertion in absentia, there are several stages required in the process of resolving the criminal offense, namely:

#### 3.1. Investigation Stage

The investigation stage in the crime of desertion in absentia committed by TNI soldiers is the initial step taken before the case file proceeds to the investigation, prosecution, and trial stages. This investigation involves an initial investigation process by the Commander of the Soldier Unit concerned and is followed by intervention from the Military Police (POM TNI). The steps taken in the investigation stage, namely:

- Initial Identification by the Unit Commander, meaning that when a TNI soldier is absent from his duties without valid permission for 30 consecutive days, the commander of the soldier's unit records this absence as a suspected desertion crime.
- Report to the Military Police, meaning that if within 30 days the suspect does not provide news or return to the unit, the unit commander will make an official report to the Military Police (POM TNI). This report is accompanied by administrative evidence, a list of attendance, and information about the background of the suspect suspected of committing the crime of desertion.
- Assignment of Investigators by the Military Police, meaning that upon receiving the report, the Military Police immediately assign investigators to begin the initial investigation. The investigator will verify the report from the unit commander and gather information regarding the whereabouts of the absent suspect, including checking the place of residence, seeking information from family, friends, or service colleagues, and exploring the possibility of other indications such as disciplinary violations or personal problems.
- Preparation of an Investigation Report, meaning that if after searching and summoning the suspect is not found, the investigator from the military police will make an investigation report stating that the suspect is absent without a valid reason and is equipped with evidence that has been collected, such as witness statements from the unit, attendance documents, and proof of the absence of valid permission. After the investigation report is completed and the suspect remains unaccounted for, the file will be forwarded to the investigation section for legal proceedings.

#### 3.2. Investigation Phase by Military Police

The investigation stage by the Military Police (POM TNI) in the case of desertion crimes committed by TNI soldiers in absentia is an essential process after the investigation is completed and the situation where the

suspect has not been found. This investigation aims to collect accurate evidence so that the case can be submitted to the prosecution and trial stages, even though the suspect is not present at the trial. The stages in the investigation, namely:

- Receipt of the Investigator's Report, meaning that after the investigation phase is completed and the suspect remains unaccounted for, the military police receive an investigation file containing the 30-day unauthorized absence report, the results of searches, and preliminary evidence during the investigation. Based on this report, the military police begin the investigation process to investigate the case further and prepare the file to proceed to court.
- Collection of Additional Evidence, meaning that the military police as investigators begin to collect evidence that includes examining witnesses from fellow soldiers, unit commanders, or family members as well as administrative documents in the form of attendance lists, permission letters, or military disciplinary records and personal information on the suspect that can provide clues as to the reasons for committing the crime of desertion.
- Summoning the defendant, meaning that the military police make efforts to summon the defendant officially where this summons is carried out in stages and as many as 3 (three) times with a sufficient period between each summons. Suppose the suspect is not present after the official summons. In that case, the investigator can continue the investigation process even though the defendant cannot be present by noting this in the case file.
- Making a Case File, meaning that after evidence has been collected, witnesses examined, and the accused cannot be found, the military police compile a complete case file which includes the investigation report, the evidence that has been collected, and a statement that the accused cannot attend the trial (In Absentia).

### 3.3. Prosecution Stage

The stage of prosecution of the crime of desertion in absentia committed by TNI Soldiers is a series of legal stages in the Military Court where TNI Soldiers who commit desertion (leaving duty without valid permission) will be tried even though the defendant is not present in the trial (In Absentia). Before prosecuting, the Military Oditur handling the desertion case must make a charge plan. A charge plan is a letter prepared by the Military Oditur before filing formal charges in court (Gebi Vani Habeahan and July Esther, 2024). After the investigation by the Military Police (POM TNI) is completed and the case file is complete (P-21), the case file will be submitted to the Military Prosecutor. The military prosecutor will prepare an indictment if sufficient evidence is found that the defendant has committed desertion. The indictment prepared by the army prosecutor describes the act of desertion committed by the defendant. In the case of desertion in absentia, the indictment is still ready based on the evidence gathered during the investigation, even though the accused was not present. The indictment contains several things, such as the defendant's identity, the time and place of the desertion, the evidence that strengthens the allegation of desertion, and the article charged to the defendant. After the indictment is finalized, the military prosecutor submits the case file to the military court for trial. If the defendant still cannot be found at this stage, the prosecution process can still be carried out in the defendant's absence (In Absentia). However, before the trial begins, the Military Court is obliged to summon the defendant legally. The summons is usually made through an official letter sent to the defendant's address. This summons is made 3 (three) times in a row, and if the defendant cannot attend, the trial will be conducted in absentia.

During the trial, the military prosecutor will present the charges to the Panel of Judges, even in the absence of the accused. The process of proof is based on the testimony of witnesses, meaning the unit commander or fellow soldiers who are aware of the criminal offense committed by the defendant, and documentary evidence, which is a letter of assignment, attendance, or official report showing that the defendant was absent without valid permission. After the evidence is complete, the military prosecutor

submits the charges against the defendant. Although the defendant was lacking, the military prosecutor still submitted his charges on the facts of the trial, where the military prosecutor will refer to the provisions in the Military Criminal Code (KUHPM).

### 3.4. Implementation of Judgment

The implementation of the verdict in the crime of desertion in absentia for TNI soldiers has a procedure that continues even though the defendant is not present at the trial (Agus prambowo Sulistiyo, Joko Sri Widodo, and Hedwig, 2023). The stage of implementing the decision, namely the first stage, begins after the Panel of Judges at the Military Court decides, even though the defendant is not present at the trial based on the evidence and testimony submitted after the trial. In this decision, the Judge will state whether the defendant is guilty of the crime of desertion and determine the sentence to be imposed. After the verdict is rendered, the Military Court will notify the military prosecutor and the commander of the unit where the defendant serves. This notification is made even though the defendant is not present at the trial; in this case, the defendant is still considered to have been notified through official media such as letters, print media, or announcements by the provisions of military procedural law. In the absence of the defendant, the next step is tracking efforts by the military police or the unit where the defendant serves to find the defendant who committed the crime of desertion in absentia. This action is part of the execution of the verdict, where the military police will work with the unit commander to find the defendant who has fled and bring him to the Military Court for execution (Warsono, 2019). If the defendant is found after the verdict is handed down, he will be arrested and immediately taken to the place of detention determined by the court.

Once the defendant has been arrested, the judgment handed down by the court will be executed. The form of execution depends on the type of sentence imposed by the court, such as imprisonment or even dismissal. Once the execution of the verdict begins (the defendant starts serving the prison sentence), the military prosecutor and the unit commander are responsible for ensuring that the court order carries out the sentence. As such, the execution stage of the verdict in the crime of desertion in absentia involves the active efforts of the military authorities to locate the accused and execute the judgment that the Military Court has imposed.

## IV. Conclusion

Based on the explanation above, it can be concluded that the crime of desertion examined in Absentia is a criminal offense in which the defendant leaves the service without valid permission consecutively for longer than 30 days in peacetime and longer than 4 days in wartime and is not found, in an examination conducted without the presence of the defendant. Article 143 of Law No. 31 of 1997 states that what is meant by examination without the presence of the defendant (In Absentia) is an examination carried out so that the case can be resolved quickly to uphold the discipline of soldiers to maintain the integrity of the troops. Article 143 explains the requirements for the trial of desertion crimes in absentia, namely the time limit of the case is 6 (six) months calculated from the date of submission to the court, has been summoned to appear in court 3 (three) times and can be carried out on desertion cases whose investigations are carried out in absentia. In resolving the crime of desertion in absentia, several stages are required: the investigation stage, the investigation stage by the Military Police, the prosecution stage, and the implementation stage of the decision.

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