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### RESEARCH ARTICLE

#### LAW ENFORCEMENT FOR DESERTION CRIME OFFENDER OF INDONESIAN NATIONAL ARMY.

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#### Abstract

The knowledge and understanding of each soldier concerning various provisions of law is an absolute prerequisite to realize a law-abiding and law-conscious professional. It is a normative-juridical research. The research was conducted in Jayapura city, Papua Province, Indonesia. The results show that Desertion is a pure military crime and as a forbidden act which in principle can only be violated by a military. Due to specific circumstances or because a military interest requires such action is specified as a crime that is expressly set and threatened in article 87 of the Military Criminal Code. A good law enforcement strategy for the Indonesian National Army soldiers as desertion offenders can be pursued through the Military Criminal Code, which will be settled through military court. In addition, it can also through the Military Administration Law, by imposing administrative measures such as suspension on every soldier who commits such actions. However, if it cannot be formulated in the laws, at least it can be regulated in the regulation of the Indonesian National Army commander.

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#### Introduction:-

The Indonesian National Army is an Indonesian State Soldier that hold to the discipline of the soldier, obedient and loyal to their leadership and upholds the attitude and honor of the soldier. Government Regulation of the Republic of Indonesia No. 39 of 2010 on Administration of Indonesian National Army Soldiers affirms that every Indonesian National Army soldier is obedient and loyal to the laws and regulations of the military. Thus, all actions that are followed must also be based on laws and regulations both on general and specific rules.

Soldiers are required to always behave in discipline. Its implementation is to comply with and commit all the rules and regulations contained in the norms and ethics of the soldier in everyday life. In addition, the Indonesian National Army soldiers are commitment and consistency to commit all the rules and regulations on the norms and the ethics of the soldiers as a consequence to the choice of profession as the Indonesian National Army soldier (Salam, 2006). This is what must be realized and committed to be used as a guide to avoid any form of action that can harm the unit and yourself.

In essential, the discipline of the soldier is an obedience based on the physical and spiritual consciousness over their devotion to the State and the nation. However, it cannot be denied that in reality, there is often a motivation by the Indonesian National Army soldier to commit desertion. Desertion is a form of deviation of the soldier discipline in

the system of ethics of the Indonesian National Army soldiers and as unlawful action. According to the Military Criminal Code stated that desertion is a crime and a way for a military person to withdraw from official duties. Desertion is a despicable act, mistakes committed by the Indonesian National Army soldiers who have a character that can harm the unit and discipline of soldiers. If a military unit does not adhere to the discipline, then it will be harmful to both society and country. Therefore, desertion is a very serious problem and requires immediate handling, then law and order will be realized if supported by high discipline, hence discipline is a problem that must be addressed.

According to Mietzner (2006), that one of the wisdom of leader to take action against any violation is through a quick trial and does not hesitate to impose hard sanctions by dismissal of the Military, as it has been proven to be deserting. The wisdom is a deterrent to certain parties and eliminates the growing view within society that the Indonesian National Army soldiers are immune from the law or untouchable by the law.

Crime or doing an injustice other than a humanitarian issue is also a social problem, even expressed as the oldest social problem (Chasawi, 2002). Facing the crimes has been made many efforts to overcome it. Efforts to tackle crime are included in the criminal policy framework. Criminal policy is a rational effort of a country to combat crime. Combat crime using criminal sanctions is the oldest way, as old as human civilization itself. Others call it the older philosophy of crime control.

In the committing the duty of the Indonesian National Army soldiers is necessary to have an inherent and continuous supervision conducted by military police. Guidance or supervision over the committing of discipline and order is the duty and responsibility of every Military Unit commander. Military *oditur* as law enforcement officers within the Indonesian National Army commit the power of the State government in the field of prosecution and investigation. *Oditur* in commit their duties and authority behave for justice and righteousness based on Belief in the One and always upholds the principle that every person is equal in the law.

In order to enforce administrative settlement of orderly, effective and efficient criminal case in *Oditurat* level, it is necessary to issue instructions of *Oditurat* administration in settling criminal case within military court. This *Oditurat* administration instruction is intended as a guide for *Oditurat* to commit the function of settling criminal cases within the military court. This *Oditurat* administration instruction aims to achieve the process of settling criminal cases in *Oditurat* level in an orderly, effective and efficient manner.

The knowledge and understanding of each soldier against various provisions of law is an absolute prerequisite to realize a law-abiding and law-conscious professional. The Indonesian National Army soldiers must know and understand the legal aspects underlying the implementation of the duties as their responsibility. In order for desertion does not spread among soldiers, then law and order will be realized if supported by high discipline, thus discipline is a major problem that must be addressed.

#### **Method of the Research:-**

The research is a normative-juridical research. The location was conducted in Military institution in the Jurisdiction of Main Court III-16 in Makassar at Kodam VII Wirabuana, Military Oditur, in Lantamal VI and Koopsau II in Makassar. The author conducts research in the jurisdiction of the Main Court III in Makassar on the basis of consideration that in Kodam VII Wirabuana entered in third rating as desertion crime of the Indonesian National Army soldier in Indonesia.

#### **Military Law Enforcement Against Desertion:-**

There are 2 (two) forms of desertion, namely: pure desertion and desertion as a continuation or increase of the crime of absence without permission (Article 87 paragraph 1 of the Military Law). A military who intends to withdraw permanently from their official duties, to avoid war, as long as it is in their own heart and has not been manifested by a concrete act, so long as it is clear that it cannot be said as unlawful action.

Observing the legal construction of the provisions of the way for a soldier to withdraw from the execution of the official duties, it can be understood that the desertion should be interpreted that in the self-deserting soldiers should be reflected the attitude that he no longer wants to be in military service. Such attitudes may be realized in the action concerned leaving the unity within the period at least 30 (thirty) consecutive days or withdrawing permanently. In a

place he should be, without it difficult to expect from him to become a military capable of committing his duties (Agustin, 2004).

In the life of military, the absence in a place to commit a duty is determined as a crime, because the understanding of discipline is a very urgent thing from the life of the military. Different to the life of non-military organizations, that action is not a crime, but as a violation of organizational discipline. This should be understood by law enforcers within the Indonesian National Army, especially military judges, in order to examine and adjudicate cases of desertion to impose fair and equitable decisions and to benefit the interests of military unity.

Likewise, going without purpose is an unlawful action, if without permission, it is clear that the unlawful lies from the words "without permission" but if get permission from his leader then it is an unlawful action. If a military leaves his duty because he has been granted a leave of absence, and he not intends to return permanently to his duties, such action is already an unlawful action or with the permission then this action has fulfilled the elements of desertion.

In the case where the offender has worked in a particular agency without an agreement with the head of the service that the work is temporary before he returns to its unity, it can be interpreted as going away permanently (Mustofa, 2010). Even if the action before leaving has committed to a close friend about his intentions and then shortly after leaving he was caught by the officers, then the incident has included the crimes of desertion. Similarly, the term "their service duties" should be interpreted in such a way.

Military went to avoid and intended to avoid the danger of war. This statement is clear that it does not question the circumstances, although article 87 verses (1) can also be applied in time of war. For example, in case of an armed rebellion in North Sulawesi, the area will automatically occur in time of war, but on Java island is safe (in peace), if sergeant A of Battalion 400/Raider based in Semarang escapes from the unity, because known that the next day the battalion would be sent to North Sulawesi to fight the rebels, the sergeant A had fulfilled the elements of the above article.

In addition to the desertion crime as described above, the next desertion crime is desertion which is an increase or continuation of crime. The form of desertion crime as an increase or continuation of crime is the most common offense of the Indonesian National Army soldiers compared to other forms of desertion crime. This is in accordance with the data obtained at the location of the research, precisely in the Military Court III-16 Makassar which the authors obtained data on the data of desertion crime that has been decided by the Military Court III-16 Makassar in January 2012 to January 2016 as summarized in Table 1.

**Table 1:-** Data of desertion which has been decided by Military Court III-16 Makassar

No	Forms of Desertion	Cases	Percentage
1	Withdrawing permanently from his duties of service	72	28,1%
2	The increase of absence without permission exceeds 30 days in peacetime, 4 days in time of war	185	71,9%
	Total	257	99,9%

**Source:** Primary data, 2017 (*edited*)

Based on the table above illustrates that most of desertion committed by soldiers of Kodam VII/Wirabuana in the period of January 2012 to October 2016 as many as 257 cases, such the arrangement of dispersion in the military criminal law. Dispersion is forbidden acts which in principle can only be violated by a military. Due to circumstances of a special nature, the act is qualified as a criminal offense provided for in Article 87 of the Military Criminal Code. However, viewing from justiciable aspect, the military criminal law (in the sense of material and formal) is part of a positive law which applies to the justiciable of military justice, which determines the basics and rules on the acts which are prohibited and obligatory and against the offender is threatened with crime.

The law applicable to a military person (or justiciable of military justice) is not only a Military Criminal Law but also a General Criminal Law and the provisions of the General Criminal Law (basically used by the Military Criminal Law with some exceptions), then the enforcers especially those engaged in military juridical bodies must master the science of General Criminal Law and the Military Criminal Law.

Mixed military crimes are forbidden or required actions that are substantially determined in other legislation, but also it is regulated in the Military Criminal Code (or in other Military Criminal Code) due to a typical military situation or other something so that more serious criminal threats are required. It may even be heavier than a criminal penalty on the original crime. The reason for the objection is the criminal penalty in the Criminal Code is felt to be lacking in justice given the specific things that are attached to a military person.

Given a military person is armed to keep security, it uses the weapon to rebel, the military were placed in a chamber without constrained by walls because they had been credited with *corps guest* but one of them stole in the chamber (Prasetyo, 2010). Furthermore, the military as a subject of a criminal offense of a military person includes the general criminal offense as well as a military criminal offense. In the event of a “mixed military crime” (*gemengdemilitairedelict*), the military is simultaneously as subject of a general and military crimes (*concurssidealis*).

#### **Strategy of Law Enforcement For the Indonesian National Army Soldiers as Desertion Offender:-**

In line with the development of law today, then demands of legal understanding for the Indonesian National Army soldiers are absolute, among others, legislation that regulates the Indonesian National Army in the hope to serve as guidance for the coaching of the Indonesian National Army. To realize the order of life is needed to uphold justice, truth, order, and legal certainty that can provide guidance to the Indonesian National Army soldiers. Because order is a quality condition that can be realized through the rule of law in a military unity. But order is only one aspect of the rule of law, because the law aims to create a peaceful life through the task of achieving legal certainty and justice (Ryamizard, 2003).

As law enforcement proceeds, any problems that arise must be solved by using a legal approach as a reference (Nonet & Selznick, 1978). Thus, it is expected the guarantee of legal certainty can be done well. With the guarantee of legal certainty brings a positive impact for the country of Indonesia in the eyes of the international world, as a dignified nation because it has been deemed to have been able to enforce and uphold the law in the nation and State.

Within the jurisdiction of the Main Courts III-16 Makassar is a strategic component as the Implementer of the Defense Departments duties in the region which acts as the spearhead in the duties. Because the Indonesian National Army’ duties to maintain the integrity and sovereignty of the Unitary State of the Republic of Indonesia for the Indonesian National Army is a constitutional mandate as regulated in Article 7 of Act No. 34 of 2004. These duties is the spirit and ethics of the Indonesian National Army soldiers as contained in *Sapta Marga* and Soldier Oath.

As an institution, the Indonesian National Army was established to defend the foremost, homeland security. Also, a history notes that the Indonesian National Army has never been absent in all efforts to deal with the threat to the Unitary State of the Republic of Indonesia, both from inside and outside. The respect of the Indonesian National Army for human rights and the universal values that are now part of the world order, such as the rule of law and good governance are also the contribution of the Indonesian National Army in developing democratic life. The adherence of the Indonesian National Army on the constitution as shown now is an important part of democracy.

The task of defense area empowerment together with the Regional Government and other relevant agencies with the defense area responsibility of the Provinces of South Sulawesi, West Sulawesi, Southeast Sulawesi, Central Sulawesi and North Sulawesi under the command of Kodam Commander, Koopsau Commander and Lantamal Commander based in Makassar, South Sulawesi Province, Indonesia.

Hence, it should be realized that as a Indonesian National Army soldier is required to always behave discipline. Its implementation is to comply with and enforce all the rules and regulations contained in the norms and ethics of the soldier in everyday life. In addition, the Indonesian National Army soldiers must be committed and consistent to commit all the rules and regulations on the norms and ethics as a consequence of the choice of profession as the Indonesian National Army soldier. This is what must be realized and executed with the best to be used as a guide to avoid any form of action that can harm the unity and yourself.

In the context of desertion as one of crimes committed by members of the Indonesian National Army, the absence of soldier without permission or so-called absconds from his service intentionally is a crime. Observing the substance of the formulation of the article, in accordance with the provisions for the way the Indonesian National Army soldier to withdraw from the duty of service, it can be understood that the nature of the crime of desertion should be

interpreted that the Indonesian National Army soldiers who desert should be reflected the attitude that he no longer exists his desire to be in military service.

Such attitudes may be realized in the action concerned that leaving the unity within the limit of a period of at least 30 (thirty) consecutive days or withdrawal permanently. In everyday life, a military is required for his preparedness where he should be, without that it is difficult to be expected of him to become a military capable of carrying out his duties.

In the life of military, the absence in a place to commit the service is determined as a crime, because the understanding of discipline is a very urgent thing from the life of the military. As with the life of non-military organizations, that act is not a crime, but as a violation of organizational discipline. When observes the meaning of the formulation of an act of withdrawal permanently from its service duties, in passing the act, it shows that it will not return to his place. Perhaps it can be seen from the fact that he has worked for a company, without stating the work is only temporary.

As described above, the authors can understand that the nature of desertion crime is not just the act of leaving the agency without permission within 30 (thirty) days, rather that it must be understood that the nature of the desertion crime contained the intention of the attitude and will of the offender to withdraw from his duty of service and therefore must be interpreted that the Indonesian National Army soldiers contained the will or desire that he no longer desire to remain in military unity.

This should be understood by law enforcers within the jurisdiction of the Indonesian National Army, especially military judges, in order to examine and adjudicate desertion cases to impose fair and equitable decisions and to benefit the interests of military unity. In reality, there is often the motivation of the Indonesian National Army soldier to desert, due to fear, to senior by mistake, so he chooses to leave the service. Another thing is due to external factors both economic and family problems and so forth.

To establish a professional and strong military force, then one of the factors that have a positive impact is the need to pay attention to the welfare of members of the military. Given members of the military are at the forefront of defending the State from enemy attacks, it is reasonable for the State in this case the government provides the living expenses in accordance with the duties it carries. Military members should leave their families for duty and this would require adequate living expenses. On the other hand, the identity of the Indonesian National Army is an identity that encompasses the soul, spirit, and inner power which is outwardly demonstrated through the struggle process of the nation in which the Indonesian National Army is part of the people, born and fought with the people in defense of the interests of State.

Efforts that can be done in dealing with desertion crime are a preventive effort, which is an effort to prevent the emergence of desertion. And also, repressive effort is an effort to overcome an event that has occurred. For the settlement of criminal acts within the Indonesian National Army, there is a need for regulation to achieve the integration of ways of acting between officials who are authorized in the settlement of criminal cases within the Indonesian National Army. Therefore, a decision letter is issued by KASAD No. SKEP/239/VII/1996 regarding the Criminal Settlement Guideline in the Indonesian National Army, as the elaboration of Decision Letter No: Skep/711/X/1989 regarding the Criminal Settlement within the Armed Force.

The settlement of criminal offense as occur within the Armed Forces of the Republic of Indonesia goes through several stages as follows:

1. Investigations;
2. Prosecution;
3. Examination in court; and
4. Decision

These stages are almost identical to the stage of criminal settlement in the general courts. It is just that the officials are authorized to settle the case is different. In the Military courts, those who have the right to be investigators are "officers based on legislation authorized to conduct investigations against members of the Indonesian National Army and/or those subject to Military court" i.e Military Police as regulated in Act No. 31 of 1997 regarding military court order.

In the event of a crime committed by members of the Indonesian National Army, the Military Police shall conduct investigation in accordance with the procedures set forth in the Criminal Procedure Code and Act No. 31 of 1997 regarding the military court. Thus, the Military police is one of the backbones that uphold the legal norms within the Armed Forces of the Republic of Indonesia.

As function of the Military Police which is a technical function is directly participate in determining success in the coaching of the Armed Force and the operation of defense. In addition to sense of justice, discipline and order which is a key requirement in the life of the soldier reflected in the attitude of behavior, action and devotion it is necessary to have strict and continuous supervision conducted by the Military Police.

Mechanism of settling soldier's violations in the Indonesian National Army up to now are known several mechanisms to settle the violations committed by the Indonesian National Army soldiers i.e the mechanism of Administrative Law, Armed Forces Discipline Law and the Criminal Law. The settlement using a mechanism of criminal law is intended for soldiers who commit offenses that meet the qualifications of a criminal offense. Its material law refers to the Military Criminal Code, and partly to Act No. 31 of 1997 on Military Justice. As for the mechanism of formal law settlement is regulated in Act No. 31 of 1997.

The second mechanism is to use discipline law for the Indonesian National Army soldiers who commit acts with qualifications of discipline violations as set out in Act No. 26 of 1997 on Discipline Law for the Indonesian National Army soldiers. The third mechanism is administrative law for soldiers who commit offenses but the qualification of their actions is outside the criminal law and discipline. The imposition of administrative sanctions is the prerogative of the superior, but there is also a unique in practice because administrative law may also be imposed by a military court judge as an additional punishment of a criminal offense committed by the Indonesian National Army soldiers. The mechanism for the imposition of administrative law is governed by regulations issued by both the Indonesian National Army commander and the Chief of Staff of the Armed Forces. Based on the three mechanism for settle soldier offenses within the Indonesian National Army appears to have accommodated all violations committed by soldiers and each already has a clear mechanism and a clear enforcement agency as well. This should be carefully considered if the Code of Ethics Council of the Indonesian National Army is to be established.

### Conclusion:-

Desertion is a pure military crime and as a forbidden act which in principle can only be violated by a military. Due to specific circumstances or because a military interest requires such action is specified as a crime that is expressly set and threatened in article 87 of the Military Criminal Code. A good law enforcement strategy for the Indonesian National Army soldiers as desertion offenders can be pursued through the Military Criminal Code, which will be settled through military court. In addition, it can also through the Military Administration Law, by imposing administrative measures such as suspension on every soldier who commits such actions.

As a recommendation of research to support accelerates of desertion settlement process is necessary to formulate a time limit which is used as a guide for law enforcement officers to solve settle a case. However, if it cannot be formulated in the laws, at least it can be regulated in the regulation of the Indonesian National Army commander.

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