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Legal analysis of the settlement of the criminal act of absence without permission according to Military Criminal Law and Military Disciplinary Law

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Abstract
Purpose: This paper examines two main problems: 1) How is the article on the crime of unauthorized absence in military criminal law, and 2) How is the crime of unauthorized absence according to military criminal law and its comparison with military disciplinary law.
Research Methodology: This study uses a normative legal method with a focus on legislation and case studies.
Results: The results of the study show that the crime of unauthorized absence which is included in the provisions of military criminal law, namely absence without permission for a maximum of four days during peacetime, turns out to result in the failure to achieve the tasks and interests of the unit and causes unrest in the unit, so it must be resolved according to the military criminal procedure law mechanism to be examined and tried in a military court. Meanwhile, the crime of absence without permission of no more than four days in peaceful conditions if it does not impact the interests of the service and does not interfere with the achievement of unit tasks and does not cause problems in unit development, then it is sufficient to be resolved through military disciplinary law by considering the element of error in the perpetrator.
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1. Introduction

The military is a member of the armed forces of a country that is regulated by statutory provisions. As Indonesian citizens living in society, the military is also bound by applicable laws and regulations, both general and specific. The main task of the military as stated in Law Number 34 of 2004 concerning the Indonesian National Army is to uphold state sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protect all people and territory of Indonesia from threats and disturbances to the integrity of the nation and state.

Another specificity that regulates the military is regarding the provisions of disciplinary law regulated in law where no other government agency or organization regulates its rules of order or official regulations regulated in law and is given sanctions in the form of deprivation of liberty in the form of disciplinary detention.

Military disciplinary law is the oldest law that applies to the military and is a set of rules, both written and unwritten, which then developed into the law that formed military law (Tambunan, 2013). Military

law which is currently known to consist of military disciplinary law and military criminal law was originally a single entity where the commander was the sole authority to try his members who committed violations. However, with the development of the rule of law, then the violations or actions were tried by a judge (Zahrani, Nurmayani, & Deviani, 2022).

The settlement of military crimes itself has provisions for the settlement of criminal acts through military disciplinary law channels which are the authority of the Case Submitting Officer (Papera). In addition, in military disciplinary violations there are also provisions regarding military disciplinary violations which are not only regarding provisions or regulations of the service but are also expanded regarding provisions regarding crimes that are so light in nature that can be resolved according to military disciplinary law.

The systematics of the Military Criminal Code (KUHPM) itself follows the systematics of the Criminal Code (KUHP) but for book 3 regarding violations contained in the Criminal Code, in the KUHPM it has been separated into the Military Disciplinary Law which is currently enacted by Law Number 25 of 2014 concerning Military Disciplinary Law. The existence of these two regulations aims to ensure the achievement of tasks, and maintain a good level of discipline to maintain the maintenance of military life, military disciplinary law is regulated which is strengthened by military criminal law. The two legal systems, namely military criminal law and military disciplinary law, in addition to supporting and strengthening each other, there is also a relationship between the two (H. Seran, Nursalam, & Tamunu, 2022; H. V. Seran, Pandie, & Sayrani, 2022).

Book II of the Criminal Code on crimes can generally be divided into two large parts, namely pure military crimes (zuiver militaire delict) and mixed military crimes (gemengde militaire delict) (Sianturi, 2010). Pure military crimes are prohibited or mandatory actions that can basically only be violated by a military member, due to the special nature of the situation or because of military interests that determine the action as a crime. Mixed military crimes are prohibited or mandatory actions that have basically been determined in other laws, but are regulated again in the Military Criminal Code (or other military criminal laws) due to special military circumstances or other natures that require a heavier criminal threat.

One of the purely military crimes is Absence without permission. The provisions for absence without permission are regulated in Article 86 of the Military Criminal Code which states that. "Military personnel who intentionally carry out absence without permission are threatened with:
1st, With a maximum imprisonment of one year and four months, if the absence is in peacetime for at least one day and no longer than 30 (thirty) days.
2nd, With a maximum imprisonment of 2 years and 8 months, if the absence is in wartime for no longer than 4 days."

Based on the formulation of this article, for military personnel who carry out absence for at least one day without permission, it is a criminal act so that a criminal sanction can be given through a trial in a military criminal court. The application of the settlement of absence without permission is not only resolved according to military criminal law, but there are two ways of settlement, namely resolved according to the provisions of the Criminal Code and according to military disciplinary law (Bismar et al., 2022; Putri, Respationo, Erniyanti, & Parameshwara, 2022).

The crime of absence without permission that can be resolved through military disciplinary law is absence without permission for a maximum of 4 (four) days during peacetime. In the case of military disciplinary punishment for violations of criminal laws and regulations that are very light in nature, as stated in Article 8 letter b of Law Number 25 of 2014 concerning Military Disciplinary Law, one of which is the crime of absence without permission, the decision to resolve through military disciplinary law is the authority of Papera after receiving legal opinions and advice from the Military Auditor (obid, Article 40 paragraph (1).

Based on this background, the author chose to raise this topic in a thesis entitled **"Legal Analysis of the Settlement of Criminal Acts of Absence Without Permission according to Military Criminal Law and Military Disciplinary Law"**.

1.1. Problem Formulation

Based on the explanation of the background of the problem that has been described, the main problems in this thesis are:

1. How is the formulation of the article on the crime of absence without permission in military criminal law?
2. How is the resolution of the crime of absence without permission according to the provisions of military criminal law and absence without permission according to military disciplinary law?

2. Literature Review

2.1. Military Criminal Law

Military criminal law is part of positive law, which applies to the justiciability of military justice, which determines the basis and regulations regarding actions which are prohibited and mandatory and for which violators are subject to criminal penalties, which determines in what cases and when violators can be held responsible for their actions and which also determines the method of prosecution, sentencing and execution of criminal penalties, in order to achieve justice and legal order (Sianturi, 2010).

2.2. Criminalization

Criminalization in Indonesian law is a method applied to provide sanctions or punishment to someone who has committed an unlawful act (criminal act). Criminalization is a form of torture or suffering determined by criminal law and given to someone who violates the norms stipulated in the law. To achieve the objectives of criminal law, one of the methods used is to impose a criminal penalty on someone who has committed a crime. In this case, the main issue regarding the basis for justifying criminal punishment is "What is the reason to justify (rechtsvaardigen) the imposition of a criminal penalty by the authorities against a perpetrator of a crime".

2.6. Military Crimes

Military criminal law is one aspect of military law that regulates criminal acts related to military duties and does not apply to civilians. The rules regarding criminal law for military personnel are stated in the Military Criminal Code, which is an official, codified regulation.

Military crimes are divided into two types: first, pure military crimes (zuiver militarie delict) and second, mixed military crimes (gemengde militarie delict). Pure military crimes refer to acts that are specifically prohibited by military regulations. In addition to having special characteristics, pure military crimes are also related to military interests.

2.7. Definition of Unauthorized Absence

The crime of unauthorized absence in military criminal law refers to a situation where a military member is absent from his place of duty without official permission from an authorized superior. This absence is considered a pure military crime (zuiver militaire delict), namely prohibited/required actions that in principle can only be violated by a military person, due to special circumstances or because a military interest requires the action to be determined as a crime.

Unauthorized absence in the Military Criminal Code is regulated in Article 86 of the Military, who intentionally commits an unauthorized absence is threatened with:
1st, With a maximum imprisonment of one year and four months, if the absence is during peacetime for at least one day and no longer than thirty days.
2nd, With a maximum imprisonment of two years and eight months, if the absence is during wartime for no longer than four days.

From the formulation of the article above, a military person who is absent without permission during peacetime for at least 1 (one) day and no more than 30 (thirty) days is included within the scope of this article.

Unauthorized absence is regulated in Article 86 of the Military Criminal Code (KUHPM) which states that: The military, who intentionally commits an unauthorized absence, is threatened with:
1st, With a maximum imprisonment of one year and four months, if the absence is in peacetime for at least one day and no longer than thirty days.
2nd, With a maximum imprisonment of two years and eight months, if the absence is in wartime for no longer than four days.
The formulation of the article states that acts of unauthorized absence by military members that last at least 1 (one) day and no more than 30 (thirty) days in peacetime are included in the provisions of this article.

2.7.1. Procedures and mechanisms for law enforcement related to unauthorized absence under military criminal law

The mechanism carried out in enforcing this law goes through several stages starting from the investigation stage carried out by Ankum, Military Police and Military Auditors. The examination in court is carried out by the court in the military justice environment and the criminal execution stage is carried out in the military correctional institution. This stage will run inseparably and will be interrelated in order to enforce the law.

2.8. Military Disciplinary Law

Based on Law Number 25 of 2014 concerning Military Disciplinary Law, this law includes regulations and norms that aim to regulate, foster, and enforce military discipline and order. Regulations regarding military disciplinary law are regulated in Law Number 25 of 2014.

The subject of military disciplinary law includes the military and individuals who are considered equivalent to the military by law. The military itself refers to members of a country's armed forces who are regulated by applicable laws and regulations. According to the law, someone who is considered equivalent to the military is someone who is regulated by the provisions of military law, even though they have not officially become members of the military. For example, student soldiers who have not been inaugurated are usually not considered military. However, according to Law Number 34 of 2004 concerning the Indonesian National Army, student soldiers are still subject to the regulations that apply to soldiers. In addition, Law Number 27 of 1997 concerning mobilization and demobilization also stipulates that military law applies to mobilizers who are carrying out duties as members of the armed people's resistance.

2.9. Violation of military disciplinary law

Violations of military disciplinary law include acts or actions carried out by the military that violate the law and/or military disciplinary regulations and are contrary to the principles of military life based on the Sapta Marga and the soldier's oath. Although in Law Number 25 of 2014 there is no longer such a division, the substance of the violations is still referred to and guided by.

In Law Number 26 of 1997, the types of violations of military disciplinary law are formulated as follows:

a. Violations of soldier disciplinary law include violations of pure disciplinary law and violations of impure disciplinary law.
b. Violations of pure disciplinary law are any acts that are not criminal acts, but are contrary to official orders or acts that are not in accordance with the rules of soldier life.
c. Violations of impure disciplinary law are any acts that are criminal acts that are so light in nature that they can be resolved by soldier disciplinary law.

d. Determination of the settlement of the soldier disciplinary law in paragraph (3) is the authority of the Case Submitting Officer, hereinafter abbreviated as Papera, after receiving legal advice from the Military Auditorate.

2.10. Military Disciplinary Punishment

According to Article 9 of the Military Disciplinary Law, a military man who is proven to have violated the disciplinary law can be subject to disciplinary punishment in the form of a warning, light disciplinary detention for up to 14 days, or heavy disciplinary detention for up to 21 days. A warning as a form of disciplinary punishment will be given in writing by Ankum. If the warning is given directly without being written, it is not considered a military disciplinary punishment. In the two types of military disciplinary punishments, namely light detention and heavy detention, it is detention so that military disciplinary law is a disciplinary law that is different from other professions, this is what makes military disciplinary law regulated by law because it is related to the deprivation of liberty.

In the military disciplinary law detention system, there are two types of detention, namely light detention and heavy detention, which differ in the length of the detention period. Although the minimum duration of detention, both light and heavy, is one day, the duration of detention can vary according to the decision of Ankum.

2.11. Absence without permission in peacetime according to Military Disciplinary Law

In carrying out official duties and obligations, there are often deviations or violations of legal regulations, both those applicable in the scope of military law and general law. One of the violations often committed by soldiers is absence without permission during peacetime, which is a criminal offense in the TNI environment. However, with the renewal of military disciplinary law, absence without permission is regulated more specifically in Law Number 25 of 2014 concerning Military Disciplinary Law. The explanation of article 8 in letter b in the law states that absence without permission that lasts up to 4 days is considered a stand-alone disciplinary violation. In other words, if a military person commits the crime of absence without permission for a maximum of 4 days, the violation is considered a minor crime and does not require additional requirements to be categorized as such.

The most important element in absence without permission of no more than four days which is resolved through the mechanism of disciplinary law is the provision that the act or action must be carried out during peacetime. Peacetime itself can be interpreted as a country in a safe condition that carries out normal routine duties not during wartime, emergency conditions or units that are being prepared to carry out special operations tasks. In addition to peacetime, the criteria for resolving unauthorized absences included in military disciplinary law are to ensure that the interests of the service are not disturbed. This means that unauthorized absences must not cause tasks in the unit to be unimplemented or unachieved.

The interests of the service include various operational aspects that are essential for the smooth running and success of military tasks. When a military member is absent without permission, a vacuum can arise that has a negative impact on team performance and the overall effectiveness of the unit. Therefore, it is important to assess the impact of such absences on operational continuity and ensure that no tasks are neglected or goals are not achieved. This criterion is an important basis for enforcing military disciplinary law, because maintaining the stability and efficiency of the unit is a top priority. In this case, every disciplinary action must consider its impact on the overall military operation, as well as ensure that each member contributes optimally to achieving common goals without neglecting individual responsibilities.

3. Research methodology

3.1. Type of Research

This research uses the type of Normative Juridical legal research with an analytical descriptive approach, namely a scientific method based on certain systematics and thinking to study one or several legal phenomena by analyzing them based on relevant statutory provisions.

3.2. Collection of Legal Materials

The collection of legal materials is carried out through document studies or library materials, especially secondary legal materials. For secondary legal materials in legal research, it can be limited to the use of document studies or library materials. This library method is carried out by visiting various libraries, such as the Military Law College library, the Ditkumad library and the national library to read, review, and study literature and other sources related to the material discussed in the research with the intention of obtaining relevant theoretical materials, both directly and indirectly, with the formulation of the problem that will be used as a theoretical basis.

3.3. Legal Material Analysis

This study uses a qualitative-normative analysis method. Qualitative methods refer to research methods that produce descriptive-analytical legal materials, namely information stated by respondents in writing or verbally, as well as real behavior that is researched and studied as a whole. Then it is concluded in order to formulate the conclusions of this study.

3.4. Drawing Conclusions

The conclusion is drawn using deductive logic, meaning a method of drawing specific conclusions from general statements. The conclusion is the answer to the problem posed, based on the results of tests and discussions carried out convincingly throughout the research. As for the study of general concepts, it is analyzed specifically from the Military Criminal Code, Law of the Republic of Indonesia Number 25 of 2014 concerning Military Disciplinary Law and the opinions of criminal law experts through their research books.

4. Results and discussions

4.1 Settlement of criminal acts of absence without permission according to the provisions of military criminal law and absence without permission according to military disciplinary law

The crime of absence without permission is regulated by the provisions of the military criminal code. Article 86 point 1 of the Military Criminal Code (KUHPM) stipulates that a military person who intentionally commits the crime of absence without permission during peacetime, with a minimum duration of one day and not exceeding thirty days, can be subject to imprisonment for a maximum of one year and eight months. Thus, every military person who is absent without permission for at least one day is included in the provisions of this article. This article does not stipulate specific criteria regarding the type of absence without permission in question.

The crime of absence without permission is regulated by the provisions of the military disciplinary law. In Article 86 point 1 of the KUHPM, the minimum absence is one day and if it is less than one day then the act is not a crime but rather an act of violating military disciplinary law or the act is included in Article 5 paragraph (2) of Law Number 26 of 1997 concerning the Disciplinary Law of the Armed Forces of the Republic of Indonesia, namely a pure violation of disciplinary law (Sianturi, 2010). However, with the renewal of disciplinary law with the enactment of Law Number 25 of 2014 concerning Military Disciplinary Law, there are two provisions regarding the crime of absence without permission, where in Article 86 of the Criminal Code and the explanation of Article 8 letter b, Law Number 25 of 2014 concerning Military Disciplinary Law, Article 8 states: Types of violations of military disciplinary law consist of:

a. Any act that is contrary to official orders, official regulations, or acts that are not in accordance with Military Rules of Procedure; and
b. Acts that violate criminal laws that are so light in nature.

Then explained in the explanation of Article 8 letter b of Law Number 25 of 2014 concerning Military Disciplinary Law regarding "acts that violate criminal laws and regulations that are so light in nature" include:

a. All forms of criminal acts classified in laws and regulations related to the threat of imprisonment for a maximum of 3 (three) months or imprisonment for a maximum of 6 (six) months;
b. Simple cases and easy to prove;

c. The criminal act that occurred did not result in disruption of military interests and/or public interests; and
d. Criminal acts due to absence without permission during peacetime for a maximum of 4 (four) days.

From the amendment of Law Number 26 of 1997 concerning Disciplinary Law, Soldiers of the Armed Forces of the Republic of Indonesia to Law Number 25 of 2014 concerning Military Disciplinary Law has caused problems because in Article 86 point 1 of the Criminal Code, the limit for absence without permission is one day and is categorized as a crime, while in the explanation of Article 8 letter b of Law Number 25 of 2014 concerning Military Disciplinary Law also regulates absence without permission for a maximum of four days during peacetime, this causes problems due to the lack of synchronization or conflict of these laws and regulations, so that there is no legal certainty because both Article 86 point 1 of the Criminal Code and Article 8 letter b both regulate it, while Article 86 point 1 of the Criminal Code has not been revoked (Mulyono, 2019).

4.2 Mechanism for Settling Minor Crimes Resolved Through Military Disciplinary Law

Military disciplinary law can not only be imposed on the military or those equated with the military who commit violations of military disciplinary law in the form of actions that are contrary to official orders, official regulations or those that violate military rules of order, but military disciplinary law can be imposed on the military who commit crimes. The criminal acts in question are crimes that are so light in nature which are the second type of violation of military disciplinary law. The process of resolving criminal acts that are included in such light crimes is different from the military who commit violations of military disciplinary law that are contrary to official orders, official regulations or those that violate military rules of order and also different from the process of resolving criminal acts that are not such light crimes or ordinary crimes.

In the purpose of punishment, it is not only seen from the perspective of retaliation but also must see the benefits for that, the existence of a criminal act that is of a light nature is resolved through military disciplinary law. The process of resolving military crimes including crimes of such a minor nature through military disciplinary law must have legal certainty in accordance with the provisions and provisions of the contents of the law, therefore in resolving crimes of such a minor nature through military disciplinary law is based on Law Number 31 of 1997 concerning Military Justice Jo. Law Number 25 of 2014 concerning Military Disciplinary Law, namely:

4.2.1 Investigation

In the investigation stage for the military or those equated with the military who commit military crimes or crimes of such a minor nature are the same, because at this investigation stage a crime is not yet known whether the crime committed is an ordinary military crime or a crime of such a minor nature. In determining a military crime is a crime of such a minor nature must meet the criteria in the explanation of Article 8 of Law Number 25 of 2014 concerning military disciplinary law. In the law there are types of military crimes including crimes of such a minor nature, namely THTI Crimes for a maximum of 4 days and Crimes that must meet 3 criteria simultaneously. The implementation of Investigations for military crimes and crimes of such a minor nature is no different between the two.

Investigations in the military environment are carried out by investigators and assistant investigators. investigators, namely Ankum, POM or Oditur. While the assistant investigators are the Provos of the Indonesian National Army, the Provos of the Indonesian National Army, the Provos of the Indonesian National Army, the Provos of the Indonesian National Army, the Air Force. Assistant investigators have the same authority as investigators in handling criminal acts that occur in their units, except in terms of collecting files and submitting case files to the Auditorate. Investigators who receive reports or complaints regarding events suspected of being criminal acts are required to immediately carry out the necessary investigative actions. In the event that an assistant investigator receives a report or complaint from the Ankum, the Ankum will hand over the investigation to the POM or Military Auditor to carry out the investigation. If the party who knows, receives the report or complains is the POM or Military Auditor, they are required to immediately carry out the investigation and report it to the Ankum.

Investigators who receive reports or complaints must make a letter of receipt of the report or complaint, which is then signed by the reporter or complainant.

In the implementation of the investigation, the investigator determines the suspect with sufficient initial evidence suspected of committing a crime. Sufficient initial evidence refers to the existence of initial evidence that at least includes a police report and at least one type of additional evidence, such as a witness examination report, an examination report at the scene, or an investigation report. This evidence is needed as a basis or requirement to arrest someone suspected of having committed a crime. With this initial evidence, the investigator can arrest the suspect. The arrest is carried out by the Investigator, a member of the Military Police, or his subordinate superior who has the authority to punish (Ankum), by following an arrest warrant that includes the identity of the Suspect, the reason for the arrest, a summary of the criminal case charged, and the location where the Suspect will be questioned.

The type of crime that is so light in nature in the form of a THTI for a maximum of 4 days, then in the investigation carried out by the Investigator it will be known what crime was committed, if THTI then it will also be known how many days the suspect committed THTI. To determine whether a crime is a crime that is so light in nature, it is determined from the investigation. After conducting an investigation, the Investigator does not determine that a crime is a crime of such a minor nature, but after the investigation is completed, the Investigator must immediately submit the files to the Superior who has the authority to punish, the Case Submitting Officer, and the original files to the relevant Auditor. Submission of files to the Military Auditor must be accompanied by the transfer of responsibility for the Suspect and evidence.

4.2.2 Settlement through military disciplinary law

The investigation conducted by the investigator in this case POM then submits the case file to the Auditor, the Auditor after receiving the results of the investigation from the investigator then examines the case file submitted whether it is complete or not the case file submitted to the Military Auditor. If the case file submitted is incomplete in this case the formal requirements are incomplete then the Military Auditor immediately asks the investigator to complete the formal requirements, the request from the Military Auditor can only be done verbally or in writing. After studying the case file it turns out that the results of the investigation are incomplete then the Military Auditor can carry out additional investigations by calling witnesses or suspects and other things that are the authority of the investigator, but if the results of the investigation are incomplete and returned to the investigator then the Military Auditor provides direction on things that need to be completed.

After the case file is complete and the results of the investigation are complete, the Military Auditor examines the case file, if according to the Military Auditor the act committed is an act of such a minor nature, the Military Auditor makes and conveys his legal opinion to the case file in the form of the case being resolved according to Military Disciplinary Law, in the event that the case file does not agree with the Military Auditor that the case is resolved according to Military Disciplinary Law, the case file is required to provide a written answer. The written answer from the Officer Submitting the Case, which includes his considerations regarding the opinion, will be the basis for submitting a difference of opinion with the Auditor to the Main Military Court for a decision.

The difference of opinion between the Auditor General and the Case Submission Officer (Papera) relates to the method of resolving the case. The Military Auditor is of the opinion that the case should be resolved outside the Court in the military court environment, while Papera argues that in the interests of justice, the case needs to be brought to the Court in the military court environment. If the Military Auditor remains of his opinion, he can submit a request with clear reasons to the Case Submission Officer, so that the difference of opinion is decided by the Main Military Court. After receiving the request and its reasons, the Case Submission Officer is obliged to send the request, together with the case files and written opinion from Papera, to the Main Military Court. After hearing the opinion of the Auditor General in the Main Military Court hearing, the Judge will decide whether the case should be submitted to the Court in the military court environment or not. If the Main Military Court decides that the case should be submitted to the Court, the Case Submission Officer is obliged to carry out the

submission of the case after receiving the files from the Main Military Court. Conversely, if the Main Military Court decides that the case does not need to be submitted to the Court, the Case Submission Officer will issue a decision letter to resolve the case through military disciplinary law.

In the event that the Military Auditor is of the opinion that the crime is not a crime of such a minor nature and the case must be submitted to the court, the Military Auditor shall make and provide a legal opinion to the case-referring officer in the form of a request that the case be submitted to the Court. If the case-referring officer is of the opinion that the crime committed is a crime of such a minor nature, the case-referring officer is required to provide a written response. The written response from the Case-Referring Officer which includes his considerations regarding his opinion will be the basis for submitting a difference of opinion with the Military Auditor to the Main Military Court so that it can be decided. The Case-Referring Officer is of the opinion that the case should be resolved outside the Military Court, while the Military Auditor is of the opinion that in the interests of justice, the case needs to be submitted to the Military Court. If the Military Auditor remains firm in his position, the Auditor will submit a request along with his reasons to the Case-Referring Officer so that the difference of opinion can be decided by the Main Military Court in a hearing. After receiving the request from the Prosecutor along with the reasons, the Case Referring Officer is required to send the request, together with the case files and the written opinion of the Case Referring Officer, to the Main Military Court. After hearing the opinion of the Prosecutor General in the hearing, the Main Military Court Judge will decide whether the case needs to be submitted to the Military Court or not.

If the Main Military Court decides that the case must be submitted to the Court within the military justice system, the Case Referring Officer must immediately submit the case files after receiving the files from the Main Military Court. However, if the Main Military Court decides that the case does not need to be submitted to the military court, the Case Referring Officer will issue an official decision for the resolution of the case through military disciplinary law. If the Military Auditor is of the opinion that the crime committed is considered minor, the Auditor will prepare and submit a legal opinion to the Case Referring Officer to suggest the resolution of the case through military disciplinary law. If the Case Referring Officer agrees with the Auditor's opinion, he will issue a decision letter regarding the resolution of the case in accordance with military disciplinary law. This decision letter is then submitted to the Superior Who Has the Right to Punish through the Military Auditor, so that the Superior Who Has the Right to Punish can impose military disciplinary punishment.

Such a minor crime does not always have to be resolved through disciplinary law, the Military Auditor or the officer who referred the case has the authority to refer the case to the court if the crime committed meets the requirements including a minor crime. In the case of a crime that does not meet the requirements as a minor crime in the military disciplinary law, the papera or the Military Auditor cannot resolve it through military disciplinary law, the crime must first meet the requirements that are included in a minor crime, then the Military Auditor can provide a legal opinion to be resolved through military disciplinary law and the papera can issue a decision letter to resolve the case through military disciplinary law.

The settlement of a crime through disciplinary law channels can not only be carried out by the Papera based on the legal opinion of the Military Auditor but can also be carried out by a judge in a court hearing. In the case of a crime committed is a minor crime, then only the officer who referred the case based on the legal opinion of the Military Auditor can do it, but in the case of a crime committed is declared free or acquitted, then the judge can decide to resolve a crime through military disciplinary law.

4.2.3 Imposition of Disciplinary Penalties

The case handover officer who has issued a decision letter to settle a criminal act through military disciplinary law submits it to a superior who has the right to punish through the Military Auditor. The superior who has the right to punish if within 6 months after receiving the decision letter to settle through military disciplinary law the superior who has the right to punish has not imposed a military disciplinary penalty, then the case has expired and the superior ankum issues a decision to settle the

case in the interests of the law. If this occurs due to the negligence of the ankum, then the superior ankum will issue a written warning, a written warning from the superior ankum is given no later than 3 months after it is declared expired.

With the existence of a decision letter to settle a case through military disciplinary law, the ankum no longer needs to examine the convict, the ankum only determines what disciplinary punishment will be given. In the case of resolving a criminal act through disciplinary law, the ankum will conduct an examination through an investigation to be used as a consideration for the ankum to impose a military disciplinary penalty. Military disciplinary punishment consists of 3, namely a warning, a light disciplinary detention for a maximum of 14 days and a heavy disciplinary detention for a maximum of 21 days. In determining the length of detention, the Criminal Investigation Unit must endeavor to realize justice and guidance by considering the circumstances at the time the crime was committed, the personality, and the daily behavior of the suspect. In the implementation of severe disciplinary detention, the convict cannot receive guests, cannot be employed, and undergoes the detention in a closed place.

The decision to impose a military disciplinary sentence is read out during a military disciplinary hearing. Military disciplinary punishment is carried out after the verdict is issued in a military disciplinary hearing. The period of Military Disciplinary Punishment ends at the morning roll call on the following day from the last day of Military Disciplinary Punishment that must be served. For example, if it is finished on Friday, the punishment period ends on Saturday at the morning roll call. If the following day is a holiday, the punishment period ends at the time according to the morning roll call on a working day. Each Military Disciplinary Punishment is recorded in the Military Disciplinary Punishment Book which contains the identity of the Convicted Personnel, Number and date of the Military Disciplinary Punishment Decision, type of Military Disciplinary Punishment imposed, duration of punishment, articles of provisions or regulations violated, start and end dates of carrying out the punishment, presence or absence of objections, Number and date of decision of the Superior Ankum, and/or Ankum from the Superior Ankum.

In addition to being recorded in the Military Disciplinary Punishment Book, Military Disciplinary Punishment is also recorded in the Personnel Data Record Book. In the military disciplinary law, that in the imposition of military disciplinary punishment must be followed by administrative sanctions, whether imposed disciplinary punishment of reprimand, light disciplinary detention or heavy disciplinary punishment. In administrative sanctions imposed differently depending on the type of disciplinary punishment imposed.

According to Dr. Agustinus, S.H. M.H. and Dr. Prastopo S.H., M.H. said that for the criminal act of absence without permission which is included in the provisions of military criminal law, namely absence without permission for a maximum of four days during peacetime, it turns out to result in the failure to achieve the tasks and interests of the unit and cause unrest in the unit, then it must be resolved according to the military criminal procedure law mechanism to be examined and tried in a military court. Meanwhile, the criminal act of absence without permission for no more than four days in peaceful conditions if it does not have an impact on official interests and does not interfere with the achievement of unit tasks and does not cause problems in unit development, then it is sufficient to be resolved through military disciplinary law (Agustinus 2020).

Basically, the author agrees with the opinion above, but the author needs to add the importance of seeing the element of error (Schuld) as the principle in criminal law, namely Geen Straf Zonder Schuld, which means there is no crime without error. Mistake is a person's psychological relationship with the action carried out as the theory of will and wit, the perpetrator wants and realizes the essence of his actions including the consequences. The form of mistake consists of two, namely the first intention with the intention (oogmerk) meaning the occurrence of a certain action or result (which is in accordance with the formulation of criminal law) is truly a manifestation of the intention or purpose and knowledge of the perpetrator.

Second, intention with definite awareness or necessity (Opzet bij zakerheids of noodzakelijkheids bewustzijn) in the gradation of intention with definite awareness that is relied on is how far the knowledge or awareness of the perpetrator about the Action and consequences which are one of the elements of a crime that occurs. Third, intention with awareness of the possibility (dolus eventualis) intention with awareness may have previously been called conditional intention or dolus eventualis. This intention is the lowest gradation of intention. The second form of error is negligence (Culpa) in the law it is not determined what negligence means. From the knowledge of criminal law it is known that the core, properties or characteristics are:

a. Intentionally doing an action that turns out to be wrong, because he uses his memory/brain incorrectly when he should have used his memory (as best as possible). In other words, he has done an action (active or passive) without the necessary vigilance.
b. The perpetrator can predict the consequences that will occur, but feels he can prevent them. If the consequences are certain to occur, he prefers to do the action that will cause those consequences. But the action is not undone because of which action he is then criticized for being against the law.

Viewed from the perspective of the perpetrator's intelligence or memory power, the gradation of negligence is distinguished by gross negligence (culpa lata) and light negligence (culpa levis). For example, an error in the form of culpa is a military man who is on leave in a remote area with difficult transportation access. When he finished his leave, the transportation used was not available due to bad weather. Communication devices could not be used so he was late returning to his unit. Based on the case example, the author is of the opinion that the element of error based on the case needs to be considered that the case is more appropriate to be resolved through military disciplinary law than resolved according to the provisions of military criminal law.

The next case example is a military man who was assigned to secure the president but in practice he was absent. Because he woke up late because he stayed up late playing with his friends. Viewed from his mistake in this case, it falls into the category of deliberate error with definite awareness. He knew or was aware of the perpetrator about the actions and consequences which are one of the elements of the crime that occurred. In cases like this, the author believes that even though the absence without permission for one day has a wide impact, the resolution is through military criminal law.

That in the implementing provisions of Law Number 25 of 2014 concerning Military Disciplinary Law, namely in the Regulation of the TNI Commander Number 44 of 2015 concerning Military Disciplinary Law, there are no special criteria for special conditions that are the basis for consideration for cases of absence without permission to be resolved according to the provisions of military disciplinary law. According to the author, there needs to be a provision that regulates the criteria for resolving absences without permission for no more than 4 (four) days during peacetime. So that there is no arbitrariness by Ankum and Papera in resolving cases of absence without permission.

That based on the principle of criminal law that punishment is utimum remedium which means one of the principles in Indonesian criminal law which states that criminal law should be used as a last resort in law enforcement. With the existence of two provisions regarding the settlement of criminal acts of absence without permission, then based on this principle, cases of absence without permission are more appropriately resolved through disciplinary law by considering the elements of error and the consequences arising from the absence without permission. Because punishment can create a bad label in society because the military who are sentenced are often labeled as criminals by their environment.

This stigma can persist even after they have served their sentence, making it difficult for them to reintegrate into society. As a result, they may face in everyday social interactions. This impact not only affects the military, but also their families who also feel the burden of social stigma. Therefore, it is very important to consider a more rehabilitative approach to punishment in order to minimize this negative impact and support more effective reintegration.

5. Conclusions

5.1. Conclusion

In the author's opinion, there are similarities in the provisions in the settlement of criminal cases of absence without permission, namely according to the provisions of military criminal law and provisions of military disciplinary law where in the Military Criminal Code that the crime of absence without permission during peacetime of one to four days can be resolved according to the provisions of criminal law, while according to the provisions of military disciplinary law, the case of criminal cases of absence without permission during peacetime of no more than 4 (four) days can also be resolved according to military disciplinary law channels.

The crime of absence without permission included in the provisions of military criminal law, namely absence without permission for a maximum of four days during peacetime, turns out to result in the failure to achieve the tasks and interests of the unit and causes unrest in the unit, then it must be resolved according to the military criminal law mechanism to be examined and tried in a military court. Meanwhile, the crime of absence without permission for a maximum of four days in peaceful conditions if it does not have an impact on official interests and does not interfere with the achievement of unit tasks and does not cause problems in unit development, then it is sufficient to be resolved according to military disciplinary law by considering the element of error of the perpetrator.

5.2. Suggestions

There needs to be a special regulation on the settlement of criminal acts of absence without permission during peacetime of no more than 4 (four) days, especially in the implementing regulations of military disciplinary law, namely Perpang Number 44 of 2014 concerning Military Disciplinary Law, which does not mention detailed criteria for criminal acts of absence without permission regarding the provisions on the criteria for criminal acts of absence without permission that are included in the provisions of military criminal law and criminal acts of absence without permission that are included in military disciplinary law.

In resolving criminal acts of absence without permission of no more than four days during peacetime, it is very important to pay attention to the element of guilt of the perpetrator. Handling such cases should not only look at the length of the absence, but also understand the context and reasons behind the action. For example, whether the absence was caused by an emergency or other justifiable reason, or whether there was an element of negligence or bad intention from the perpetrator. By considering these factors, the settlement process can be carried out more fairly and proportionally.

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