

Legal analysis of Judge's considerations in the decision of expiration of prosecution to be resolved legally in military discipline (Case Study Decision of the Main Military Court Number:27-K/PMU/BDG/AD/VI/2023)

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Article History

Received on 18 April 2025
1st Revision on 1 May 2025
Accepted on 5 May 2025

Abstract

Purpose: the author is interested in conducting this research; One of the problems related to the dilemma between formal or material categories can be seen related to the expiration date.

Research methodology: This research is a normative legal research by discussing case studies of existing court decisions and is linked to applicable provisions and regulations and the opinions of legal scholars.

Conclusions: The conclusion of this study is that the statute of limitations (verjaring) is regulated in Article 78 of the Criminal Code (KUHP) which is in fact the time limit for the public prosecutor to exercise his prosecution authority. In fact, the statute of limitations is a material aspect that is considered no longer needed for criminalization because it exceeds the time. However, there is an opinion that considers that the statute of limitations is a formal scope, because it is related to the administration of a case, not the main material of the case. On this basis, it can be seen that there are differences of opinion regarding the scope of the statute of limitations, which is in fact debated between the material or formal realm.

Keywords: *Gender Reassignment, TNI Soldiers, Military Administrative Law*

How to Cite: Simanjuntak, J. H. (2024). Legal analysis of Judge's considerations in the decision of expiration of prosecution to be resolved legally in military discipline (Case Study Decision of the Main Military Court Number:27-K/PMU/BDG/AD/VI/2023). *Annals of Justice and Humanity*, 4(1), 21-34.

1. Introduction

In a country of law, a person who has committed a crime can basically be prosecuted, and if in the trial it can be proven that the crime accused of him was committed, then he will be found guilty and can be sentenced according to the criminal threat of the criminal regulations violated, but in das sollen it is not always the case, there are things according to law, the right to carry out criminal prosecution is lost (Bustomi, 2023; Saleh, 1983).

The legal facts revealed at the trial stated that Colonel Inf Sxxxxx Bxxxxx became a TNI AD soldier since 1995 through education at the Military Academy in Magelang, after graduating the Defendant was inaugurated with the rank of Second Lieutenant Inf NRP xxxxxxxxxxxx after that the Defendant continued his education in the Infantry branch then after experiencing several educations, promotions and job transfers, until at the time of committing the act that became the case, the Defendant was attending Sesko TNI in Australia and currently the Defendant has been expelled from the Lemhanas Education in Australia and now the Defendant's position as Pamen Denma Mabasad with the rank of

Colonel Inf. has been legally married to Ms. Hj. Xxxxx Sari legally and with the permission of the unit commander on October 18, 1999 at the KUA Pasar Rebo District, East Jakarta according to the Marriage Certificate Number 518151/ /1999 dated October 18, 1999. And the marriage has been blessed with 2 (two) children, the first named Xxxxx (20 years old) and the second named Xxxxx (14 years old).

The Decision of the Main Military Court Number: 27-K/PMU/BDG/AD/VI/2023 which was held in Jakarta in examining and trying a criminal case at the appeal level has issued a decision against Colonel Inf Sxxxxx Bxxxxx; first Declaring to formally accept the appeal application submitted by the High Military Auditor to the High Military Auditor II Jakarta, second Confirming the Decision of the High Military Court II Jakarta Number: 55-K/PMT-II/AD/ /2022 dated March 28, 2023, on behalf of the Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx, in its entirety, third Charging the cost of the appeal level case to the state, and fourth Ordering the Clerk to send a copy of this decision along with the case files to the High Military Court II Jakarta.

The Indictment of the High Military Prosecutor at the High Military Prosecutor II Jakarta Number: Sdak/42/ /2022 dated October 20, 2022, concluded that there was sufficient reason to bring the Defendant Colonel Inf Sxxxxx Bxxxxx to trial at the High Military Court II Jakarta on charges of having committed the following acts: First: "Anyone who intentionally and openly violates morality" and Second: "A man who participates in committing adultery"

The expiration date is basically an effort by the State to provide protection and legal certainty so that criminal prosecutions are not carried out beyond the specified time limit. Black's Law dictionary defines expiration as expiration which means "a formal termination on a closing date" The term closing date in expiration date is interpreted as "the date on which an offer, option, or the like ceases to expire" (Garner 1999). It is then concluded that when the expiration date has arrived, there are no more offers, options, or the like that can be used. The statute of limitations invalidates the authority to act against perpetrators of criminal acts.

According to Suparji, the prosecution of an indictment must have at least 3 dimensions, namely careful, clear and complete. Careful in the sense of discussing the anatomy of the case, chronology, criminal events, discussing tempos, discussing locus, complete in the sense of being able to describe various evidence, various items of evidence, then how to describe them completely so that the indictment is comprehensive. In the context of making a decision, at least 3 (three) things must be considered, namely the aspects of substance, procedure, and authority. The aspect of substance is how to manifest the values of justice while the aspect of procedure is how to implement the process of procedures that must be adhered to in the process of examining a case, then the third is the aspect of authority that in the process of handling by the authorities there are no actions that exceed authority, no arbitrary actions and so on.

The three (3) things above, the aspects of substance, procedure and authority must be considered in the trial process of a decision, therefore, considering that the procedure in the case handling process clearly regulates the issue of statute of limitations when there is still a prosecution for a case that has expired, then in the expert's opinion, the decision that meets the values of the 3 (three) things above (substance, procedure and authority) is a NO (Niet Ontvankelijke Verklaard) decision, a decision that cannot be accepted because the charges are not careful in the context of the application of the article and is then incomplete in a statute of limitations, this is then the same in the context, for example, in a case that is SP3 (Investigation Termination Order), one of which is cancelled or stopped because of the law, or expired, or nebis in idem or died or the factor of the complaint offense.

The statute of limitations for prosecution is the elimination of the authority of the public prosecutor to refer criminal cases to the district court. In military criminal procedure law, it can be interpreted as the authority of the Prosecutor as a public prosecutor to refer criminal cases to the Military Court. Article 78 paragraph (1) of the Criminal Code states that "the authority to demand criminal penalties is

eliminated due to statute of limitations" 2nd "regarding crimes that are subject to a fine, imprisonment, or imprisonment of up to three years after six years".

If the time limit has passed, the demand for criminal responsibility is no longer relevant. criminal acts for several reasons, such as the negligence of investigators or deliberate intent for a long time or the victim's ignorance, make punishment for the perpetrator not considered necessary or beneficial (Riza, 2023). However, what about the justice of the victim who is harmed? For example, if someone commits falsification of a letter that is only discovered after the time limit has passed, they cannot be punished. For example, the government will act if someone who holds a position in a state institution turns out to have falsified a diploma, and if it has passed the statute of limitations, they cannot be punished (Helmi, 2016; Pratiwi, Dewi, Widnyani, & Rahayu, 2023).

The impact of the passage of time, a person cannot be prosecuted for the crime he committed. Thus, the criminal cannot be brought to court, which allows him to move freely. The crime that has occurred is no longer processed or investigated. The elimination of the prosecution indicates that the perpetrator has received punishment for his actions during his life in hiding with limited space for movement and freedom. Another factor is that law enforcement will have difficulty finding and recording all evidence if the crime is prosecuted. In addition, the perpetrator may have forgotten the incident so that it is difficult to ask for clear and accurate information, but this is different from the case in the decision of the Main Military Court Number: 27-K / PMU / BDG / AD / VI / 2023.

There is a Criminal Act of Immorality committed by a soldier where the censure by the Military Court cannot be accepted because it has expired. The Supreme Military Court's Letter Number 27-K / PMUL / BDG / AD / VI / 2023 which states that the censure has expired has been BHT through the Deed of Letter Number AMKHT / 55-K / PMT-II / AD / I / 2023 so that it is returned to the Supreme Court's Papelra and must be resolved through the Military Disciplinary Law. If the Military Disciplinary Law is imposed based on Article 8 in conjunction with. Article 9 in conjunction with Article 37 paragraph (4) of Law No. 25/2014 on HDM, then only a maximum detention of 21 (two to one) days can be imposed, so that it will affect other members of the military to carry out the rounding carried out by the accused.

Based on the background above, the author is interested in conducting this research; One of the problems related to the dilemma between formal or material categories can be seen related to the expiration date. Related to the statute of limitations (limitation of time) is regulated in Article 78 of the Criminal Code (KUHP) which is known to forget the time limit for the perpetrator to carry out the authority to statute. According to Hiariej (2024), in fact the statute of limitations forgets the material aspect which is considered no longer necessary for criminalization because it exceeds the time. However, there is an opinion that considers that the statute of limitations forgets the formal scope, because it is related to the administration of the case, not the main material of the case (Hiariej 2016). On the basis of the above, it can be seen that there are differences of opinion regarding the scope of the statute of limitations which are generally debated between the material and formal realms, so that this study is entitled **LEGAL ANALYSIS OF JUDGES' CONSIDERATIONS IN THE RESULT OF THE RESULT OF THE STAFF STATUS STATUS RESOLUTION BY LAW IN MILITARY DISCIPLINE** (Study of the Case of the statute of limitations of the Supreme Military Court Number: 27-K/PMUL/BDG/AD/VI/2023).

1.1. Problem Formulation

The formulation of the problem in this study is as follows:

1. How is the application of the Prosecution Expiration and the concept of enforcing the calculation period of the case expiration in criminal acts?
2. How does Ankum implement the Deed of Decision to Obtain Permanent Legal Force to be resolved legally by Military Discipline due to the Prosecution Expiration?

2. Literature Review

2.1. General Criminal Law and Special Criminal Law

Melzgelr, in his book as quoted by Moeljatno, argues that criminal law is a series of legal rules that give rise to (result in) a crime as a legal consequence (Rechtsfolge) of an act that has been committed. The scope of criminal acts in special criminal law is not fixed. However, it can change depending on whether there are deviations or the establishment of special provisions from the Criminal Code that regulate certain substances. This special criminal law includes military criminal law. Viewed from its history, military criminal law in Indonesia during the Dutch colonial era was coordinated with military criminal law in the Netherlands, where the Dutch Wetboek van Militair Strafrecht was in effect which was compiled in 1903 and enforced in 1923.

The relationship between general criminal law and military criminal law is regulated in Article 1 of the Criminal Code, which stipulates that general rules, including Chapter I Book I of the Criminal Code, generally apply in the use of the Criminal Code. Furthermore, according to Article 2 of the Criminal Code, if the act committed by a person subject to the Criminal Code is not mentioned therein, then the criminal act listed in the Criminal Code applies. From Articles 1 and 2 of the Criminal Code, it is clear that military criminal law is a special (special provision) of general criminal law..

2.2. Overview of Judges' Decisions in Criminal Offenses

The judge's decision is the essence of a trial process, because the judge's decision can determine the fate of the defendant and the severity of the sentence imposed on him. In accordance with Article 193 paragraph (1), the imposition of a criminal sentence on a defendant is based on the court's assessment. If the court is of the opinion and assesses that the defendant is proven guilty of committing the act charged against him, then the court will impose a criminal sentence on the defendant.

With the evidentiary system and the principle of the minimum limit of proof stipulated in Article 183 of the Criminal Procedure Code, the defendant's guilt has been sufficiently proven with at least two valid pieces of evidence that provide the judge with confidence that the defendant is the perpetrator of the crime. This criminal decision orders the defendant to be punished in accordance with the criminal threat in the article charged, because the judge's starting point in imposing a criminal sentence is based on the criminal threat.

2.3. Judge's Consideration

In providing an explanation of the judge's considerations in various decisions, it will be seen from two categories. The first category is seen from the perspective of legal considerations, and the second category is non-legal considerations, namely:

2.3.1. Legal considerations

Juridical considerations are judges' considerations based on the juridical facts revealed in the trial and have been stipulated by law as things that must be included in the verdict. Although there is no provision that explicitly states that among those contained in the verdict are juridical considerations, this has been stipulated by law and revealed as juridical facts in the trial.

The juridical considerations can be described as follows:

- a. Military Prosecutor's Charge
- b. Defendant's Statement
- c. Witness Statement
- d. Evidence.

2.4. Statute of limitations for prosecution

In criminal law, there is a concept of criminal statute of limitations, or more specifically in the Criminal Code there is a statute of limitations for criminal prosecution and a statute of limitations for the obligation to carry out criminal penalties. There are two consequences that arise from the statute of limitations for prosecution in criminal law. First, the statute of limitations causes the cessation or elimination of the right to prosecute or carry out punishment against the perpetrator of a crime. The definition of the statute of limitations for criminal prosecution is the loss or elimination of the right

held by the public prosecutor to carry out prosecution of a crime due to the statute of limitations (past of time).

In short, the implication of the statute of limitations is the end of the time period given by law to carry out prosecution against someone who commits a crime. The statute of limitations in the provisions of the Criminal Code is formulated based on the types of crimes committed and the types of crimes threatened.

Provisions regarding the concept of statute of limitations are formulated in Book I which contains general provisions, specifically in Chapter VIII concerning "Elimination of the Authority to Prosecute and Execute Criminal Procedure", as well as in Articles 78-85 of the Criminal Code. The determination of the length of the statute of limitations for the elimination of criminal prosecution is based on the severity of the criminal threat or the severity of the crime committed. The more serious the crime committed, the longer the suffering endured by the victim or the community (Chazawi, 2019; Natamiharja, Panjaitan, & Setiawan, 2025).

3. Research Methodology

3.1. Research Type

This study uses a normative legal research method. According to Peter Mahmud Marzuki, normative legal research or library legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues being studied (Marzuki, 2005; Pebrianto, 2023; Siagian, Riza, & Lubis, 2023).

3.2. Nature of Research

This research is a descriptive analytical research, which describes the problem and then analyzes the existing problems through data collected, processed, and compiled based on the theories used. This research is expected to obtain a clear, detailed, and systematic picture by analyzing data to solve problems in accordance with applicable legal provisions.

3.3. Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Law of the Republic of Indonesia Number 6 of 1950 concerning the Composition and Authority of the Court/Prosecutor's Office within the Military Court Environment.
- 3) Law Number 29 of 1954 concerning the Defense of the Republic of Indonesia, and Law Number 1 Drt of 1958 concerning the Military Criminal Procedure Law.
- 4) Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice.
- 5) Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army.
- 6) Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.
- 7) Law of the Republic of Indonesia Number 25 of 2014 concerning Military Disciplinary Law.
- 8) Law Number 1 of 2023 concerning the Criminal Code (KUHP).
- 9) TNI Commander Regulation Number 44 of 2015 concerning Military Disciplinary Regulations.
- 10) TNI Commander Regulation Number 45 of 2015 concerning Superiors Who Have the Right to Punish.

3.4. Data Collection

In this writing, data collection was carried out using the library research method or literature study (document study) through inventory, identification, and then synchronization with positive Indonesian criminal law that regulates the same thing, namely the crime of adultery. The library method was carried out by visiting various libraries, such as the National Library of the Republic of Indonesia, the Army Legal Directorate Library, and the Military Law College Library, to read, review, and study literature and other sources related to the material discussed in this study.

3.5. Data Analysis

After obtaining the necessary data, both primary and secondary data, qualitative analysis is carried out, namely by assessing, explaining, and interpreting data based on laws and regulations, principles, norms, theories, or legal doctrines, especially in criminal law. Furthermore, the results of the analysis are written in a descriptive manner. Drawing conclusions is done deductively, namely from general to more specific (Adi, 2015).

4. Results and Discussions

4.1. Application of the Prosecution Limit and the Concept of the Application of the Calculation Period for Case Limitations in Criminal Offenses

The right to prosecute a criminal case is extinguished due to statute of limitations. Expiration means that the time prescribed by law for bringing such action or offense has expired. Article 78 of the Criminal Code states that the right to prosecute a criminal case is extinguished due to statute of limitations. Expiration means that the time prescribed by law for bringing such action or offense has expired).

Table 1. Provisions on the Limitation of Prosecution and the Limitation of Execution of Criminal Sentences

| Num | Expiration Terms | Expiration of Criminal Law |
|-----|---|---|
| 1 | Article 78 of the Criminal Code Authority to demand a criminal penalty due to statute of limitations: 1. For all violations and crimes committed with printing, after 1 year. 2. For crimes punishable by a fine, imprisonment, or imprisonment of up to 3 years, after 6 years. 3. For crimes punishable by imprisonment of more than 3 years, after 12 years. 4. For crimes punishable by death or life imprisonment, after 18 years. 5. For people who are under 18 years of age at the time of committing the act, each of the statute of limitations above is reduced to 1/3 | Article 84 Authority to Execute Criminal Sentences is Abolished Due to Expiration 1. The statute of limitations for All violations is 2 years, for crimes committed with printing media the statute of limitations is 5 years and for other crimes 2. the statute of limitations is the same as the statute of limitations for criminal prosecution plus 1/3. 3. In any case, the statute of limitations may not be less than the length of the sentence imposed. 4. 4. The authority to execute the death penalty does not statute of limitations |
| 2 | Article 79 Limit of Limitation Limit of Limitation shall commence on the day after the act is committed, except in the following cases: 1. For counterfeiting or damage to currency, the limit of limitation shall commence on the day after the counterfeit goods or damaged currency are used. 2. For crimes in Articles 328, 329, 330, and 333, the limit of limitation shall commence on the day after the person directly affected by the crime is released or dies. 3. For violations in Articles 556 to 558a, the limit of limitation shall commence on the day after the list containing the violations is transferred to the clerk's office of a | Article 85 The statute of limitations shall apply on the following day after the judge's decision can be executed. 1. If a convict escapes while serving his sentence, then on the following day after the escape, a new statute of limitations shall apply. If a conditional release is revoked, then on the following day after the revocation, a new statute of limitations shall apply. 2. The statute of limitations shall be suspended as long as the execution of the sentence is postponed in accordance with an order in a general regulation, and as long as the convict is deprived of his liberty, even if the deprivation of liberty is related to |

| | | |
|---|--|-------------------|
| | court, in accordance with the general rule that stipulates that the civil registry register must be transferred to that office. | another sentence. |
| 3 | Article 80 1. Any action of prosecution stops the statute of limitations, provided that such action is known to the person being prosecuted or has been notified to him in accordance with the method prescribed in the general regulations. 2. After being stopped, a new statute of limitations begins again. | |
| | Article 81 Postponement of criminal prosecution related to the existence of a pre-judicial dispute postpones the statute of limitations. | |

Source: Data processed from the Criminal Code.

The purpose of establishing a law that regulates the statute of limitations is to avoid prosecution of cases that are very old and may have been forgotten by the public. In such cases, prosecution is considered no longer necessary. In addition, it is likely that much of the evidence in cases that occurred long ago has been lost or blurred, and witnesses may have forgotten about the incident..

Starting from the provisions of Article 78 of the Criminal Code, the question arises: when does the statute of limitations begin to apply? Is it since the defendant began to commit the crime, or since the consequences of the crime arose? In some cases, there is a possibility of a fairly long time gap between the execution of the act and the consequences it causes. For example, a person named A intends to kill B who is in a distant location by sending a cake that has been mixed with poison. The hope is that when the cake arrives at B's place, B will eat it, and after that, B will die. Sending the cake from place A to the destination (place B) takes quite a long time. Thus, there is a gap of several days between the delivery of the cake and B's death.

Wirjono Prodjodikoro and Hazelminkell Suringa argue that the statute of limitations begins on the day after the occurrence of the consequences of the crime. Meanwhile, Pompei argues that the statute of limitations is calculated from the time the act is committed. A number of legal theories teach that the law must be stable, but must not be still or rigid (Fuady, 2013). At first glance, these statements seem contradictory to each other, but they are not. This reflects one of the essential aspects of law, where on the one hand the law must contain elements of certainty and predictability in order to remain stable, but on the other hand, the law must also be dynamic in order to follow the development of human life.

4.2. Ankum Executes Deed of Decision Obtaining Permanent Legal Force to be Legally Resolved Military Discipline Due to Expiration of Prosecution

Regarding the Discipline of Indonesian National Army (TNI) Soldiers, it was first regulated in the Wetboek van Krijgstucht voor Nederlands-Indië (Staatsblad 1934 Number 168), as amended by Law Number 40 of 1947 concerning the Military Disciplinary Code. Later, this regulation was replaced by Law Number 26 of 1997 concerning the Disciplinary Law of Soldiers of the Armed Forces of the Republic of Indonesia, which was further regulated in detail in the TNI Soldier Disciplinary Regulations which were ratified through the Decree of the TNI Commander Number/KEP/22/VIII/2005 on August 10, 2005. This regulation was then updated in Law of the Republic of Indonesia Number 25 of 2014 concerning Military Disciplinary Law.

Any actions and/or actions carried out by the military that violate the law and/or military discipline regulations and are contrary to the values of military life based on the Sapta Marga and the Soldier's

Oath constitute a violation of military discipline law. The obligations of TNI soldiers include obedience, compliance, and awareness in obeying the norms and ethics that apply in society, as stated in the laws and regulations. Meanwhile, the prohibition for TNI soldiers is not a criminal act, but includes actions that are contrary to official orders and official regulations.

The superior who has the authority to punish (Ankum) in Law Number 31 of 1997 concerning Military Justice is a direct superior who has the authority to impose disciplinary punishment in accordance with the provisions of applicable laws and has the authority to conduct investigations. Ankum has several authorities, including: Conducting investigations of soldiers under his command, Receive reports on the implementation of investigations from investigators, Receive case files resulting from investigations, Detain suspect soldiers under his command.

If serving as an investigator, the authority of an investigator also applies to Ankum. Through the system of Law Number 6 of 1950, Ankum as the person in charge of the unit is considered to have limited authority. This caused a misunderstanding between the commander who acted as the person in charge of the unit and the prosecutor who was responsible for enforcing the law. A paradigm shift was then made in subsequent legal products, starting with Law Number 29 of 1954 concerning the Defense of the Republic of Indonesia and Law Number 1 Drt of 1958 concerning the Criminal Procedure Law of the Army.

Ankum is usually the direct commander of the soldier concerned. An Ankum's duties will increase if he is appointed as a Case Submission Officer (Papelra). The urgency of Ankum in military justice is based on the principle of unity of command. The role of the soldier's commander in handling a military crime cannot be ignored. In fact, in some cases, the role of the commander is prioritized compared to law enforcement officers such as the Military Police, Prosecutors, and Military Judges. Superiors Who Have the Right to Punish, hereinafter referred to as Ankum, are superiors who are authorized to impose military disciplinary punishments on subordinates under their command authority. Based on their authority, Ankum are divided into: Ankum with full authority, Ankum with limited authority, Ankum with very limited authority.

Each Ankum has a different scope of authority according to its level. In imposing sanctions on TNI members who violate discipline, the authority is fully handed over to Ankum. The definition of Ankum is regulated in Article 1 Point 9 of the Republic of Indonesia Law Number 31 of 1997 concerning Military Justice, which reads:

"The direct superior who has the authority to impose disciplinary sanctions according to the provisions of applicable laws and regulations and is authorized to conduct investigations based on this law."

Meanwhile, Article 3 of the TNI Commander Regulation Number 45 of 2015 stipulates that those who have the right to become Ankum are Commanders/Heads of Units/Services/Offices within the TNI, with the lowest rank of Dan Yon/Dan Dim or equivalent, and Dan Ki who stand alone. They have the authority to impose disciplinary sanctions on soldiers under their command and are authorized to conduct investigations.

In terms of its function in enforcing military law, the Commander as Ankum is a superior who, based on Law Number 25 of 2014 concerning Military Disciplinary Law, is given the authority to impose disciplinary sanctions on every TNI Soldier under his command authority if the soldier commits a violation of disciplinary law. If the form of violation of law committed is a criminal act, then certain commanders who are at the same level as the Korem Commander can act as Case Submission Officers (Papelra). Papelra, based on the provisions of the law, has the authority to submit cases after considering the advice and opinions of the Military Auditor.

4.3. Legal Analysis of Judge's Considerations in the Decision on the Expiration Date of Prosecution to be Resolved Legally by Military Discipline (Case Study of the Decision of the Main Military Court Number: 27-K/Pmu/Bdg/Ad/Vi/2023)

The role of a judge in the examination stage is carried out if there is a pretrial motion filed by a judge from the local District Court. This can happen if there is a request from a defendant who has been detained, or from other interested parties such as the defendant's family, legal counsel, or non-governmental organizations (NGOs) acting as defenders of the people's interests. In carrying out his duties, the judge examines the cases submitted to him to be examined, tried, and decided in accordance with the authority and power granted by applicable laws.

The authority of the judge to try has been regulated in the Criminal Procedure Code (KUHP) Article 1 Point 8, which states: "A judge is a state judicial official who is authorized by law to try." In criminal law, there are several reasons that can be the basis for a judge not to sentence a perpetrator of a crime even though his actions have met the elements of a crime. First, the reason for the elimination of criminal penalties, namely conditions that allow a person not to be punished even though they have committed a crime. In criminal law theory, the reasons for the elimination of criminal penalties have been studied in depth (Prasetyo, 2015).

1. Justifying Reason, which is a reason that removes the unlawful nature of an act, so that what the defendant did becomes a legal and correct act. Thus, the perpetrator cannot be punished.
2. Excusing Reason, which is a reason that removes the defendant's guilt even though his actions fulfill the elements of a criminal act.

While Second, the reason for the elimination of prosecution is the reasons that allow the nature of the act and the nature of the perpetrator of the crime to meet the requirements, but the government does not hold a prosecution. To be clearer, the Author presents the differences between the two, as follows:

Table 2. Differences between Reasons for the Elimination of Criminal Charges and Reasons for the Elimination of Prosecution

| Num | Reasons for Criminal Expungement | Reasons for Dismissal of Prosecution |
|-----|---|--|
| 1 | It is decided by the judge by stating that the unlawful nature of the act is erased or the perpetrator's mistake is erased, because there are provisions of the Act and law which justify the act or which forgive the perpetrator. | The law prohibits from the outset the Public Prosecutor from bringing/prosecuting suspected perpetrators of criminal acts to court. |
| 2 | The right to prosecute remains, it is not lost, but the defendant is not sentenced by the judge because the judge stated that the defendant was free from all charges. | In this case, there is no need for proof of the perpetrator's guilt or the occurrence of the criminal act, because the decision in this case cannot be accepted. |
| 3 | In other words, the law does not prohibit the Public Prosecutor from bringing a suspect who has committed a crime to court if there are reasons for the removal of the criminal sentence. | The judge does not need to examine the merits of the case. |

Data Source: Data processed by the Author.

From the table above, we can explain the difference between the reasons for the removal of a criminal case as a statement to be released from all legal charges, while the reasons for the removal of prosecution are a statement that the charges cannot be accepted by the public prosecutor.

4.5. Analysis of Judges' Considerations in Decisions

That the Jakarta High Military Court II has examined and decided the case of Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx in accordance with the Decision of the Jakarta High Military Court

II Number: 55-K/PMT-II/AD/ /2022 dated March 28, 2023, which decided as follows:

1. Declaring the High Military Prosecutor's Prosecution on behalf of Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx unacceptable.
2. Returning the case of Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx to Papelra to be resolved through military disciplinary legal channels in accordance with Law Number 25 of 2014 concerning Military Disciplinary Law.

That the first instance decision then, based on the Decision of the Main Military Court Number: 27-K/PMU/BDG/AD/VI/2023 dated July 28, 2023, decides as follows:

1. Declares formal acceptance of the appeal filed by the High Military Auditor at the High Military Auditor II Jakarta.
2. Strengthens the Decision of the High Military Court II Jakarta Number: 55-K/PMT-II/AD/ /2022 dated March 28, 2023 on behalf of Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx, for the entirety.

That the first instance decision then, based on the Decision of the Main Military Court Number: 27-K/PMU/BDG/AD/VI/2023 dated July 28, 2023, Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx did not exercise his right to file a cassation application. Thus, as of September 20, 2023, the decision has permanent legal force (BHT) as stated in the Deed of Decision Obtaining Permanent Legal Force (BHT) Number AMKHT/55-K/PMT-II/AD/I/2023. Therefore, Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx was returned to the Wakasad as Papelra to be resolved through military disciplinary legal channels in accordance with the Decision of the Main Military Court Number: 27-K/PMU/BDG/AD/VI/2023 dated July 28, 2023.

That the consideration of the first instance Judge and the appellate Judge is that Colonel Nav Toni, S.T., only found out about the actions committed by witness 1 in 2013 and only reported it on June 3, 2022, so that the formal requirements for the complaint statute of limitations have exceeded the six-year limit as stipulated in Article 78 of the Criminal Code. Complaints may only be filed within six months from when the person entitled to complain becomes aware of the crime, if they reside in Indonesia, or within nine months if they reside outside Indonesia. If the party affected by the crime has the right to complain when the time limit referred to in paragraph (1) has not yet expired, then after that time, the complaint may still be filed only for the remaining time which is still less than the time limit. The reasons for justifying the imposition of criminal penalties by the Judge, as previously explained, are based on the principle of legal protection.

Likewise, in the concept of implementing the statute of limitations in the New Criminal Code, there are 5 (five) reasons that can eliminate the authority to prosecute as regulated in Article 136 of Law Number 1 of 2023 concerning the Criminal Code (KUHP). The authority to prosecute is declared null and void if:

1. After exceeding 3 (three) years for criminal acts punishable by a maximum of 1 (one) year in prison and/or only a maximum fine of category III.
2. After exceeding 6 (six) years for criminal acts punishable by a maximum of 1 (one) year in prison and 3 (three) years in prison.
3. After exceeding 12 (twelve) years for criminal acts punishable by a maximum of 3 (three) years in prison and 7 (seven) years in prison.
4. After exceeding 18 (eighteen) years for criminal acts punishable by a maximum of 7 (seven) years in prison and 15 (fifteen) years in prison.
5. After exceeding 20 (twenty) years for a crime that is punishable by a maximum of 20 (twenty) years imprisonment, life imprisonment, or the death penalty..

Settlement of the Sxxxxx Bxxxxx case, Colonel Inf NRP xxxxx, Wakasad as Ankum can impose Military Disciplinary Punishment on the person concerned in the form of heavy disciplinary detention for a maximum of 21 (twenty one) days.

Based on the provisions of Article 8, Article 9, and Article 37 paragraph (4) of Law Number 25 of

2014 concerning Military Disciplinary Law, it is explained as follows:

1. Article 8: "Types of Violations of Military Disciplinary Law consist of all actions that are contrary to official orders, official regulations, or actions that are not in accordance with military rules and actions that violate Criminal Law Regulations of such a nature."
2. Article 9: "Types of Military Disciplinary Punishment consist of a reprimand, light disciplinary detention for a maximum of 14 (fourteen) days, or heavy disciplinary detention for a maximum of 21 (twenty one) days."
3. Article 37 paragraph (4): "When determining the type and duration of Military Disciplinary Punishment, Ankum is obliged to endeavor to realize justice and guidance by taking into account the circumstances at the time the Violation of Military Disciplinary Law was committed, the personality and daily behavior of the Suspect."

According to the letter from Kaotmilti II Jakarta Number: B/513/I/2023 dated September 27, 2023 addressed to Wakasad as Papelra regarding the implementation of the contents of the appeal decision on behalf of Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx, Pamen Denmabesad, followed up by Wakasad as Papelra to convey to Ankum Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx to be sentenced to disciplinary punishment. The imposition of disciplinary punishment is stated in the Ankum Decree on Disciplinary Punishment and is implemented as regulated in Article 43 paragraph (3) of the TNI Commander Regulation Number 44 of 2015 concerning Military Disciplinary Regulations. Furthermore, the imposition of disciplinary punishment is carried out by sending the disciplinary punishment decision to Kaotmilti II Jakarta for the administrative settlement of the case concerned.

4.6. Analysis of Ankum Disciplinary Punishment Decisions

The implementation of Military Disciplinary Law aims to realize organizational development, personnel development, development and improvement of military discipline, and enforcement of Military Disciplinary Law by paying attention to benefits and justice. Meanwhile, the implementation of Military Disciplinary Law functions as a means to create legal certainty and legal protection for the military and prevent abuse of Ankum's authority and enforce the order of life for every military in carrying out their duties and obligations.

Based on the Decision of the Main Military Court Number 27-K/PMU/BDG/AD/VI/2023, which upholds the Decision of the Jakarta High Military Court II Number 55-K/PMT-II/AD/X/2022 dated March 28, 2023 on behalf of the Defendant Sxxxxx Bxxxxx, Colonel Inf NRP xxxxxxxxx, to return the entire case to the Case Investigator Officer (PAPERA) to be resolved through the Military Disciplinary Law channel as regulated in Law Number 25 of 2014 concerning Military Disciplinary Law which has been decided based on Disciplinary Decision Number KEP/872/XII/2023 concerning Disciplinary Punishment with the following Ankum considerations:

1. Colonel Inf NRP xxxxxxxxx, Pamen Denma Mabesad, born in Medan on July 20, 1974, male, Indonesian citizen, Muslim, and domiciled at Jl. Anyelir F 33, Gedong Village, Pasar Rebo District, East Jakarta, is suspected of committing a crime of "morality and adultery".
2. Based on the Decision of the Jakarta II Military Court Number 55-K / PMT-II / AD / X / 2022 dated March 28, 2023, the prosecution by the Jakarta II High Military Auditorate cannot be accepted because the case has expired. Therefore, the case was returned to the Case Investigating Officer (PAPERA) to be resolved through the Military Disciplinary Law channel.
3. strengthened by the Dilmiltama Decision Number 27-K/PMU/BDG/AD/VI/2023 dated July 28, 2023 and has permanent legal force in accordance with the Deed of Permanent Legal Force Decision (BHT) Number AMKHT/55-K/PMT-II/AD/IX/2023 dated September 20, 2023.
4. The actions of the officer concerned have violated the Military Disciplinary Law, namely carrying out all actions that are contrary to official orders, official regulations, or actions that are not in accordance with military regulations, as regulated in Article 8 letter a of Law of the Republic of Indonesia Number 25 of 2014 concerning Military Disciplinary Law.
5. The officer concerned has never been sentenced to disciplinary punishment before;

From the Decision of the Superior Who Has the Right to Punish (ANKUM) against Colonel Inf Sxxxxxx Bxxxxxx, NRP xxxxxxxx, Pamen Denma Mabasad, it was determined that:

1. The defendant was found guilty of committing a disciplinary violation in the form of "all actions that are contrary to official orders, official regulations, or actions that are not in accordance with military regulations".
2. The defendant was sentenced to disciplinary punishment in the form of Heavy Detention for 1 (one) day.
3. This disciplinary punishment decision is recorded in the punishment book and the relevant personnel data book.

ANKUM has the authority to impose disciplinary sanctions on soldiers under its command authority according to the provisions of applicable laws and regulations (Article 3 of the TNI Commander Regulation Number 45 of 2015 concerning Superiors Who Have the Right to Punish). Those who have the right to become ANKUM are Commanders/Heads of Units/Services/Offices within the TNI, at least Dan Yon/Dan Dim or equivalent, as well as Dan Ki who stand alone, who have the authority to impose disciplinary sanctions on soldiers under the authority of their commander, and have the authority to conduct investigations and impose disciplinary sanctions on every TNI soldier under the authority of their command if the TNI soldier commits a violation of disciplinary law. In the event that the form of violation of the law is a criminal act, then certain Commanders who are at the same level as the Korem Commander can act as Case Referral Officers or PAPELRA who by law are given the authority to submit cases after considering the advice and opinion of the Military Auditor.

5. Conclusion

5.1. Conclusion

Understanding the Indonesian state based on law (*rechtsstaat*), not just based on power (*machstaat*), then the government must be based on law and constitution (basic law) and not absolutism. In a state of law, a person who has committed a crime can basically be prosecuted, and if in court it can be proven that he actually committed the alleged crime, then he will be found guilty and sentenced according to the criminal threat regulated in the applicable legal regulations.

Expiration is basically an effort by the state to provide protection and legal certainty so that no criminal prosecution is carried out that has exceeded the specified time limit. Black's Law Dictionary defines expiration as expiration, which means "a formal termination on a closing date." The term closing date in date expiration is interpreted as "the date on which an offer, option, or the like ceases to exist."

It can then be concluded that when the expiration date has arrived, there are no more offers, options, or the like that can be used. Expiration revokes the authority to act against the perpetrator of the crime. The aspects of substance, procedure, and authority must be considered in the trial process of a decision. Therefore, considering that the procedure in handling cases has clearly regulated the issue of statute of limitations, when a prosecution is still carried out on a case that has expired, then in the expert's opinion, the decision that meets the three main aspects (substance, procedure, and authority) is the *Niet Ontvankelijk Verklaard* (NO) decision, namely a decision that cannot be accepted because the charges are not careful in applying the article or are incomplete in terms of statute of limitations.

This is similar in the context of a case for which a Letter of Order to Terminate Investigation (SP3) is issued, one of the reasons for the cancellation of which is due to law, statute of limitations, *ne bis in idem*, death, or complaint offense factors. However, this is different from the case in the decision of the Main Military Court Number: 27-K / PMU / BDG / AD / VI / 2023.

Based on the results of the research and discussion, the conclusions of this thesis are as follows:

1. The actions of Sxxxxxx Bxxxxxx, Colonel Inf NRP xxxxxx, were carried out since 2013 and were only reported on June 3, 2022. Thus, the formal requirement for the complaint statute of limitations has exceeded six years as stipulated in Article 74 of the Criminal Code. Complaints may only be filed within six months from when the person entitled to complain becomes aware of

the crime if they reside in Indonesia, or within nine months if they reside outside Indonesia. If the party affected by the crime has the right to complain when the time limit referred to in paragraph (1) has not yet expired, then after that time, the complaint may still be filed only for the remaining time which is still less than the specified time limit.

In the case of termination of prosecution, the judge has the authority to test the validity of the termination of prosecution. Meanwhile, third parties, such as non-governmental organizations (NGOs), carry out their duties as institutions that defend and provide protection and enforcement of human interests and rights in Indonesia. The role of a judge in the examination stage is carried out if the pretrial is carried out by a judge from the local District Court who has been appointed for that purpose, if there is a claim from the defendant who has been detained, or from his family, his legal counsel, or a third party who has an interest in this case non-governmental organizations as a medium for defending the interests of the people. Every action of the judge in this case includes examining the case submitted to him to be reviewed, tried, and decided in the pretrial application in accordance with the authority and power that he has based on applicable laws.

2. Ankum has the authority to impose disciplinary sanctions on soldiers under its command authority in accordance with the provisions of applicable laws and regulations. This is regulated in Article 3 of the TNI Commander Regulation Number 45 of 2015 concerning Superiors Who Have the Right to Punish, which states that Ankum are Commanders/Heads of Units/Services/Offices within the TNI, with the lowest level being Dan Yon/Dan Dim or equivalent, and Dan Ki which stands alone.

Ankum has the authority to impose disciplinary sanctions on soldiers under the authority of its commander and has the authority to conduct investigations and impose disciplinary sanctions on any TNI soldier who violates disciplinary law. In the event that the violation of the law constitutes a criminal act, the Commander who is at the same level as the Korem Commander can act as the Case Submission Officer (Papelra), who based on the law has the authority to submit cases after considering the advice and opinions of the Military Auditor.

5.2. Suggestion

Based on the results of the research and discussion, the suggestions from this study are as follows:

1. To achieve justice, there should be no time limit, but legal certainty must be based on evidence, not on time limits alone. Therefore, the statute of limitations in the criminal acts committed by Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx, should be an exception as part of the renewal of the Military Criminal Law Decision in Indonesia through positive law, so that the law in Indonesia can realize justice.
2. The actions committed by Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx, were proven to be criminal acts. However, due to the application of the statute of limitations, the settlement was carried out through the Military Disciplinary Law. This can have an impact on other members of the military so that they do not commit similar acts. Therefore, the Wakasad as the Ankum is advised to propose that Sxxxxx Bxxxxx, Colonel Inf NRP xxxxx, be dishonorably discharged from the TNI military service through the Officer Honorary Council mechanism after undergoing Military Disciplinary Punishment.

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