

INTISARI

PENERAPAN PERADILAN IN ABSENSIA DALAM PERKARA TINDAK PIDANA DESERSI OLEH ANGGOTA TENTARA NASIONAL INDONESIA DI WILAYAH HUKUM PENGADILAN MILITER II-11 YOGYAKARTA

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Penelitian hukum ini bertujuan untuk mengetahui dan menganalisis dasar pertimbangan Oditur Militer dalam mendakwa dan Hakim Militer dalam memutus Anggota Tentara Nasional Indonesia (TNI) yang melakukan desersi secara in absentia dengan mengkaji penerapan Pasal 143 UU Peradilan Militer terhadap pemeriksaan secara in absentia bagi Anggota TNI yang melakukan desersi, serta pelaksanaan putusan desersi in absentia yang telah berkekuatan hukum tetap bagi Anggota TNI.

Penelitian ini merupakan penelitian hukum normatif-empiris. Sifat penelitian ini adalah deskriptif. Penelitian ini menggunakan data primer dan data sekunder yang data tersebut dianalisis menggunakan metode kualitatif. Penelitian hukum ini dalam menarik kesimpulan menggunakan metode deduktif.

Berdasarkan hasil penelitian dan pembahasan, dapat ditarik dua kesimpulan. Pertama, dasar pertimbangan yang digunakan oleh Oditur dalam mendakwa anggota TNI yang melakukan desersi in absentia adalah ketidakmampuan oditur mendatangkan terdakwa ke persidangan karena tidak diketahui keberadaannya setelah dipanggil sebanyak tiga kali secara sah dan patut. Hakim dalam memutus perkara desersi in absentia menggunakan dasar Pasal 143 UU Peradilan Militer yaitu hakim dalam memutus perkara tindak pidana desersi secara in absentia setelah enam bulan sejak perkara dilimpahkan ke Pengadilan Militer dan telah dilakukan pemanggilan tiga kali berturut-turut secara sah dan patut. Praktiknya terdapat disparitas penerapan Pasal 143 UU Peradilan Militer oleh Hakim Militer di Pengadilan Militer II-11 Yogyakarta dengan alasan penggunaan metode interpretasi sistematis dengan mengaitkan peraturan hukum dan perundang-undangan di Indonesia yang dilihat sebagai satu sistem yang saling terkait satu dengan yang lain. Pelaksanaan putusan desersi in absentia yang telah berkekuatan hukum tetap di Pengadilan Militer II-11 Yogyakarta telah diatur dalam UU Peradilan Militer, tetapi tidak dapat dilaksanakan sebab menemui kendala berupa terpidana tidak ditemukan dan tidak kembali. Atas kendala tersebut, sinergitas antar aparat penegak hukum sebagai upaya dalam melakukan pencarian dan penerbitan Daftar Pencarian Orang bagi terpidana.

Kata Kunci: Desersi, In Absentia, Anggota TNI, Peradilan Militer, Undang-Undang Peradilan Militer

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ABSTRACT

THE APPLICATION OF IN ABSENTIA TRIALS IN CASES OF DESERTION BY MEMBERS OF THE INDONESIAN NATIONAL ARMED FORCES WITHIN THE JURISDICTION OF MILITARY COURT II-11 YOGYAKARTA

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This legal research aims to identify and analyze the basic considerations of the Military Prosecutor in indicting and the Military Judge in deciding TNI members who committed desertion in absentia by examining the application of Article 143 of the Military Justice Law to the examination in absentia for TNI members who committed desertion. This legal research also aims to identify and analyze the implementation of in absentia desertion decisions that have permanent legal force for TNI members.

This research is a normative-empirical legal research. The nature of this research is descriptive. This research uses primary data and secondary data which are analyzed using qualitative methods. This legal research in drawing conclusions uses the deductive method.

Based on the results of the research and discussion, two conclusions can be drawn. First, the basic consideration used by the prosecutor in charging members of the TNI who committed desertion in absentia was the inability of the prosecutor to bring the defendant to trial because his whereabouts were unknown after being summoned three times legally and properly. The judge in deciding the case of desertion in absentia uses the basis of Article 143 of the Military Justice Law, namely the judge in deciding the case of desertion in absentia after six months since the case was submitted to the Military Court and three consecutive summonses have been made legally and properly. In practice, there is a disparity in the application of Article 143 of the Military Justice Law by Military Judges at the Military Court II-11 Yogyakarta on the grounds of using the systematic interpretation method by linking legal regulations and legislation in Indonesia which are seen as a system that is interrelated with one another. The implementation of desertion in absentia verdicts that have been legally binding in the Military Court II-11 Yogyakarta has been regulated in the Military Justice Law, but cannot be implemented because it encounters obstacles in the form of the convict not being found and not returning. Due to these obstacles, synergy between law enforcement officials is an effort to search and issue a Wanted List for convicted persons.

Keywords: *Desertion, In Absentia, members of the Indonesian National Armed Forces, Military Justice, Military Justice Law*

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