



The Implementation of Dishonorable Discharge for Indonesian National Armed Forces (TNI) Soldiers as a Means of Law Enforcement

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Abstract. To uphold legal principles within the military framework, it is imperative to establish legislative measures that serve as regulatory frameworks for soldiers. These measures are designed to govern their conduct both in the execution of official duties and in the regulation of their involvement within the broader societal context. This research aims to scrutinize the procedural intricacies involved in implementing dishonorable discharge for Indonesian National Armed Forces (TNI) soldiers who engage in criminal activities as a means of upholding the rule of law. Furthermore, it seeks to identify and address the challenges encountered in the process. This study applies a normative juridical approach, specifically descriptive-analytical research. Data comprises both secondary sources (i.e., literature works) and primary sources (i.e., interviews). The presentation of data is structured in a descriptive format, employing a qualitative analytical method. Research findings reveal that the process of implementing dishonorable discharge for TNI personnel involved in criminal activities encompasses both administrative and military disciplinary measures. Challenges encountered in the sanction application include (a) instances of unit commanders' tardiness in administering administrative penalties and (b) efforts to address these impediments by ensuring meticulous law enforcement within each unit, coupled with conducting awareness campaigns across the entire units in TNI. It is underscored that criminal acts committed by TNI personnel are regarded as breaches of military discipline, carrying the threat of military and disciplinary penalties, alongside administrative sanctions culminating in dismissal. The application of administrative sanctions is anticipated to mitigate violations and instill a deterrent effect among TNI personnel. Legal ramifications persist for the individuals involved until the completion of their service. A proposed solution requires the submission of a comprehensive personality development progress report by respective unit commanders, confirming the completion of all legal processes, thereby facilitating the individual's seamless career progression.

Keywords: Sanctions Implementation; Dishonorable Discharge; Criminal Acts by TNI AD Personnel.

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia stipulates that Indonesia is founded upon the principles of the rule of law (*rechts staat*), as opposed to arbitrary power (*machts staat*). This fundamental distinction signifies that all legal issues must be resolved within the framework of the law, as authority is vested in legal principles rather than in individuals or mere power dynamics. This assertion holds significant juridical implications, emphasizing that any transgression of the law necessitates resolution through prescribed legal procedures. In the context of the military, being a distinct community with its respective cultural ethos, there exists a unique set of norms that diverge from those of the broader society. This cultural paradigm underscores the imperative for subordinates to accord respect to their superiors, underlined by the existence of legal sanctions in cases where such respect is not duly observed. The military, characterized by its unique culture, operates within a distinct legal framework in tandem with broader legal statutes. To ensure legal enforcement within the military domain, it becomes imperative to formulate specific legislative provisions that act as regulatory

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mechanisms for soldiers. These regulations serve dual purposes: guiding soldiers in the execution of official duties and regulating their conduct within the broader societal context. It is posited that addressing legal transgressions by soldiers necessitates not only disciplinary measures but also the imposition of criminal legal sanctions to foster a structured and disciplined way of life.

The Indonesian National Armed Forces (Indonesian: *Tentara Nasional Indonesia* [TNI]) soldiers play a pivotal role as organizational entities dedicated to the defense of the nation. To effectively fulfill this role, the personnel of the Indonesian Army (Indonesian: *Tentara Nasional Indonesia Angkatan Darat* [TNI-AD], lit. “Indonesian National Military-Land Force”)—the land branch of the Indonesian National Armed Forces—is expected to uphold a heightened degree of professionalism, functioning as a fundamental component within the nation’s defense framework to safeguard the sovereignty and territorial integrity of the Republic of Indonesia. To sustain the desired level of professionalism among the Indonesian Army soldiers, an alternative measure involves the preservation and augmentation of their moral quality through the cultivation of awareness and the enforcement of legal standards. Dishonorable discharge represents a departure from general principles of criminal law, particularly concerning criminal sanctions. The manifestation of criminal law deviations within the military domain is evident in Article 6 Letter B Point 1 of the Criminal Military Code (Indonesian: *Kitab Undang-Undang Hukum Pidana Militer* [KUHPM]). This provision asserts that one specific type of supplementary criminal penalty, namely dismissal, is inherently of a purely military nature (*Van zuiver militaire aard*) and is absent in general criminal law, i.e., the Criminal Code (Indonesian: *Kitab Undang-Undang Hukum Pidana* [KUHP]). Article 6 Letter b Point 1 of the KUHPM articulates the following provision: “*An additional penalty involves dismissal from military service, with or without the revocation of the right to join the Armed Forces.*” Additionally, Article 26 of the KUHPM stipulates, “*Dismissal from military service, with or without the revocation of the right to join the Armed Forces, except as determined in Article 39, may be imposed by a judge concurrently with any verdict of the death penalty or imprisonment for a military soldier who, due to the committed crime, is deemed unsuitable to remain within the military ranks.*”

METHODS

This research was a legal study that utilized several approaches to address the examined issues, including (1) the statutory approach, (2) the conceptual approach, (3) the comparative approach, and (4) the historical and philosophical approaches. In this study, the data were analyzed qualitatively, where collected written legal materials were systematically organized based on the researched problems. Subsequently, a thorough analysis and elaboration of these legal materials were conducted in alignment with the identified issues, incorporating pertinent theoretical frameworks. To address the identified problems, a comprehensive assessment was carried out on the systematically organized legal materials, ensuring precise elucidation of their meanings, positions, and legal implications.

DISCUSSION

The stipulations concerning dishonorable discharge are delineated in Article 53 Paragraph 1 of Government Regulation No. 39/2010, addressing the Administration of TNI Personnel. This regulation governs the process of dishonorable discharge from military service, aligning with the mandates of Article 62 Paragraph 3 of Law No. 34/2004 concerning the Indonesian National Armed Forces (TNI). Dishonorable discharge, as a method of legal enforcement, is executed objectively with the intent to yield positive repercussions for other soldiers. This mechanism functions as an integral aspect of personnel development, crucial for achieving optimal results in the cultivation of TNI soldiers in alignment with the primary responsibilities of the Indonesian National Armed Forces (TNI). The dishonorable discharge for TNI Soldiers is contingent upon specific grounds, including the imposition of an additional penalty involving dismissal from TNI military service based on a legally binding court decision. Furthermore, dishonorable discharge may occur administratively due to inherent traits or overt actions that are deemed detrimental to TNI discipline. These encompass as follows.

1. Adhering to ideologies, perspectives, or doctrines conflicting with Pancasila, the 1945 Constitution, and the State and Government of Indonesia;
2. Undertaking actions posing a threat to the security and safety of the nation;
3. Being convicted more than twice based on legally binding court decisions, without the imposition of an additional penalty in the form of dishonorable discharge. According to the discretion of authorized officials, individuals falling under this category are considered unfit to remain in TNI military service;
4. Engaging in suicide attempts or committing suicide;

5. Deceasing while involved in a criminal act or as a consequence of a criminal act, which can be equated or is analogous to the circumstances specified in Letter b;
6. Engaging unexcused absence from their unit (desertion) for a period exceeding three months or remaining unaccounted for;
7. Having faced disciplinary action on more than 3 (three) occasions within the same rank or demonstrating a blatant disregard for all disciplinary measures imposed, thereby being considered unsuitable for retention as a soldier;
8. Receiving a criminal penalty more severe than a three-month prison term, and, based on the discretion of authorized officials, being deemed unfit to continue military service;
9. Subsequently discovered that, to be accepted as a TNI soldier, the individual deliberately provided false and inaccurate information;
10. Living together with a woman/man without a legal basis for marriage; portraying it as a spousal relationship. Despite being cautioned or warned by superiors or religious authorities, the individual persists in maintaining the cohabitation status without a valid marriage;
11. Engaging in immoral conduct with a person of the same gender (homosexual/bisexual);
12. Committing immoral acts involving fellow soldiers, spouses/children of soldiers, or civil servants (PNS) (including PNS officials, spouses, or children) within the TNI environment;

In implementing dishonorable discharge, careful attention should be paid to the following provisions.

1. Effective from the date when the legally binding court decision attains legal force;
2. Commencing from the date as determined by the authorized officer;
3. Initiated from the date of death during/owing to criminal activity or from the date of suicide in avoidance of assigned duties;
4. Dishonorable discharge for soldiers not subject to judicial proceedings is to be objectively considered. For officers, it is essential to give due regard to the opinions and considerations of the Officer Honor Council (Indonesian: *Dewan Kehormatan Perwira* [DKP]). For non-commissioned officers or enlisted personnel, the evaluation should involve the staff/research team established through an official directive. The effective date of dismissal is contingent upon the decision corresponding to the rank group, i.e., the general and colonel ranks following a Presidential Decision, and the

lieutenant colonel to second lieutenant ranks following a decision by the TNI Commander;

5. Dishonorable discharge, as a legal enforcement measure, is executed objectively to yield positive effects on other soldiers;
6. The administrative resolution for dishonorable discharge is expedited. Once a military court issues a final and legally binding decision imposing the additional penalty of dismissal from military service, an interim decision can be promptly issued by the Commander/Head of Unit. This interim decision aligns with the content outlined in the telegram from the assistant personnel of the respective service branch.

The Implementation of Dishonorable Discharge for TNI Soldiers Based on Court Decisions

The proposition for dishonorable discharge serves as the execution of legally binding court decisions against soldiers who have been sentenced to additional penalties, resulting in their dismissal from military service. The enforcement of dishonorable discharge for TNI soldiers can be carried out within the framework of administrative law. The proposal for a dishonorable discharge, rooted in a court decision that has attained legal finality, applies to soldiers sentenced to imprisonment more than twice without the additional penalty of dismissal from military service. This action aligns with the considerations of authorized officials who deem the individual unsuitable for retention in military service. Moreover, the recommendation for dishonorable discharge applies to soldiers who have incurred disciplinary measures at least 4 (four) times within the same rank or overtly disregarded any previously imposed disciplinary actions. Furthermore, the proposal for dishonorable discharge is suggested as a consequence of actions that inherently undermine the discipline of the TNI personnel, encompassing engagement in criminal activities punishable by imprisonment for twelve years or more or the death penalty. The decision-making process involves considering the opinions of the Officer Honor Council (for officers) and hierarchical staff recommendations (for non-commissioned officers and enlisted personnel). The submission of proposals for dishonorable discharge encompasses the following.

1. Conditions for submitting proposals for dishonorable discharge: Proposals for dishonorable discharge—grounded in legally binding court decisions imposing the additional penalty of dismissal from military service—do not necessitate consideration or opinions from the Officer Honor Council for officers. Similarly, it does not require staff recommendations for non-commissioned officers and enlisted personnel. Proposals for dishonorable discharge based on administrative law for officers are

processed following the Officer Honor Council decision, while for non-commissioned officers and enlisted personnel, it follows staff recommendations.

2. Submission of proposals for dishonorable discharge: If a legally binding court decision has been issued, an interim decision on dishonorable discharge can be promptly issued while awaiting the definitive decision of the authorized official for termination.

The Implementation of Dishonorable Discharge for TNI Soldiers Based on Administrative Law

Following administrative law, this procedure is carried out through the Officer Honor Council hearing (for officers) and examination of staff recommendations (for non-commissioned officers and enlisted personnel). The process is guided by the following criteria.

1. Soldiers who adhere to ideologies, views, or doctrines conflicting with Pancasila and display behaviors that overtly or potentially undermine military discipline: This determination is founded on the outcomes of personnel investigator examinations accepted by the Authorized Superior (Indonesian: *Atasan yang Berhak Menghukum* [ANKUM]).
2. Soldiers engaging in actions that jeopardize the security and safety of the nation and its people, deliberately providing false, incorrect, or incomplete information, and committing criminal acts punishable by a maximum of twelve years of imprisonment or more, or the death penalty: This assessment is grounded in the findings of military police investigations received by the Authorized Superior (Indonesian: *Atasan yang Berhak Menghukum* [ANKUM]) or the Investigating Officer (Indonesian: *Perwira Penyerah Perkara* [PAPER]).
3. Soldiers who intentionally commit suicide to evade investigation, legal prosecution, or assigned duties and subsequently perish while engaging in criminal activities or as a consequence of criminal acts: The assessment is conducted in absentia through the Officer Honor Council hearing (for officers) and examination of staff recommendations (for non-commissioned officers and enlisted personnel).
4. Soldiers involved in moral misconduct; They are categorized as follows:
 - a. Living together with a man/woman without a valid marriage according to prevailing positive law; Engaging in moral misconduct with the same gender (homosexual/lesbian); Having received reprimands or warnings from their superiors or religious officials.
 - b. Committing moral misconduct involving fellow soldiers, spouses/children of soldiers, or civil servants (PNS) within the TNI environment: This is based on the

investigation results received by the Authorized Superior or the Investigating Officer. If the complaint is withdrawn, the Officer Honor Council hearing (for officers) and examination of staff recommendations (for non-commissioned officers and enlisted personnel) will still be conducted.

5. Soldiers engaging in unauthorized absence from their unit for a period exceeding thirty consecutive days (desertion) and remaining unaccounted for beyond this duration: The assessment is conducted in absentia through the Officer Honor Council hearing (for officers) and examination of staff recommendations (for non-commissioned officers and enlisted personnel) based on the investigative findings received by the Authorized Superior or the Investigating Officer.
6. Following military discipline laws, a proposal for dishonorable discharge is initiated for soldiers who have faced disciplinary measures a minimum of four times within the same rank. This action is taken after the individual has completed their fourth disciplinary penalty.

Challenges encountered in the implementation process of dishonorable discharge for TNI soldiers involved in criminal activities, along with the corresponding mitigation efforts, are outlined below.

1. Errors in the imposition of dishonorable discharge

Administrative sanctions, specifically dishonorable discharge, can be invoked when there is an additional court decision, i.e., dismissal or removal from military service, as stipulated in Article 53 of the Government Regulation No. 39/2010 regarding the Administration of Indonesian National Armed Forces (TNI) Soldiers. This situation may result in the imposition of dismissal, even if the final decision does not include such additional sanctions. The occurrence of this scenario is often attributed to a lack of adherence to the procedural aspects of the case, from the initial trial stages to the cassation process. Despite the prolonged duration for filing a cassation appeal to the Supreme Court, decisive actions are imperative to comply with the highest legally binding decision. Consequently, it may lead to the TNI soldier receiving the sanction of dishonorable discharge or removal from military service.

2. Mistakes by unit commanders in applying administrative sanctions

Administrative sanctions, governed by military legislation, often undergo revisions, leading to unit commanders still utilizing outdated military legal regulations. This misapplication is particularly notable in the realm of educational and rank-related sanctions, where regulations are selected based on the soldier's length of service.

Following this, the commander issues a personality development report after the disciplined TNI soldier has completed the punishment. However, the latest regulations stipulate that the personality development report can be issued or processed by the unit commander six months after the court decision. This ensures that when the TNI soldier completes all sanctions, the review period by the unit commander for their personality development report is also concluded, allowing the soldier to promptly receive their rights.

Efforts to address the aforementioned issues involve the higher command issuing reprimands and directives to the unit commanders, instructing them to rectify deficiencies in the application of the law for the TNI soldiers. These directives are accompanied by the relevant policies and regulations applicable to each branch of the armed forces.

CONCLUSIONS

1. The proposal for dishonorable discharge serves as the practical application of a legally binding court decision against a soldier who has received an additional sentence of dismissal from military service. The implementation of the dishonorable discharge for TNI soldiers can be conducted following administrative law.
2. This proposal for dishonorable discharge is based on a court decision that has attained legal finality against a soldier sentenced to imprisonment more than twice without the additional sentence of dismissal from military service. The decision is made after considering the perspective of the authorized official, who deems the individual unsuitable for continued service in the military.
3. The proposal for dishonorable discharge is initiated against military personnel who have faced disciplinary action at least four times within the same rank, displaying a blatant disregard for all imposed disciplinary penalties. Furthermore, the recommendation for dishonorable discharge stems from behaviors or actions that distinctly jeopardize the discipline within the TNI environment, including engagement in criminal activities punishable by a prison term of twelve years or more, or even the death penalty. The decision-making process takes into careful consideration the viewpoints of the Officer Honor Council (for officers) and a layered assessment of staff recommendations (for non-commissioned officers and enlisted personnel).

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