

# Consideration Of Military Judge In Imposing Additional Punishment Of Dismissal To The Defendant According To Kuhpm

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## Abstract

Military Courts have a very important role in upholding law and discipline within the armed forces. The consideration of military judges in imposing additional punishment in the form of dismissal to the defendant, with a focus on cases of premeditated murder. The purpose of writing this article is to find out the basis of the judge's consideration in imposing a criminal verdict in the case of murder and the reasons causing additional punishment in the form of dismissal from military service. This research uses normative method by taking materials from library research or several journals, books, internet media, and refers to Article 26 of KUHPM, while empirical research uses scientific methods such as observation, interviews, and case studies. The complexity and challenges faced by military judges in enforcing law and discipline in the military environment, as well as the importance of maintaining the honor of the TNI through fair decisions and in accordance with applicable legal norms. Thus, dismissal does not only function as a sanction, but also as an effort to maintain integrity and morality within the military institution.

**Keywords:** premeditated murder, military judge's consideration, additional punishment of dismissal.

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## A. Introduction

Often the general public assesses that judges' decisions in Military Courts are more favorable to members of the TNI who are in trouble. They assume that the Military Court only favors members of the TNI, so that its decisions are often considered to alleviate the punishment of the troubled soldier. In fact, military judges have the same position as judges in general who cannot be intervened by any party. Judges as one of the elements of law enforcement officials have a very heavy task. The judge's decision has a broad impact on the survival of the defendants as well as the community and their units. However, judges are also human beings who will not escape mistakes and mistakes so that judges need signs in carrying out their duties. Judges are required to be able to communicate and maintain their role, authority and status before the community. In addition, judges must also be responsible to God Almighty, to science, the nation and state and society, especially justice seekers .<sup>3</sup>

Military Judge, High Military Judge, Main Military Judge, hereinafter referred to as Judge is an official who respectively exercises judicial power at the court<sup>4</sup> . Judges consisting of Chief Judges and Member Judges. The Chief Judge is the Judge who presides over the panel of judges in court proceedings<sup>5</sup> . Member Judges are Judges who are members of the panel of judges in court proceedings<sup>6</sup> . Judges basically have very important and decisive powers in the operation of the judicial system.

The Military Judge has a very important role in enforcing the law and discipline within the armed forces where every Soldier must submit and obey every rule of law that applies to every citizen of the country such as the Criminal Code (KUHP) and the provisions in the Military Criminal Code (KUPM) as well as other laws and regulations. In this regard, military judges are responsible for trying and deciding criminal cases involving members of the military, which often have different characteristics and complexities compared to the civilian justice system. The decisions of military judges not only affect the individuals on trial, but also have a far-reaching impact on the morale and integrity of the military institution itself. With the existence of relevant laws and regulations, military judges can uphold justice by taking into account the values and norms that apply within the military environment while always upholding the values contained in the 10 Codes of Ethics and Judicial Conduct. However, in practice there are still challenges faced by military judges, such as the reputation of the military institution, the morale of judges, and the trust of the public.

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<sup>3</sup> M. Hatta Ali, "The Judicial Commission Encourages the Realization of an Independent Judicial Power", Vol. III No. 6, June 2009, pp. 8-9.

<sup>4</sup> Article 1 paragraph (4) of Law No. 31 of 1997 concerning Military Courts

<sup>5</sup> Article 1 paragraph (5) of Law No. 31 of 1997 concerning Military Courts

<sup>6</sup> Article 1 paragraph (6) of Law No. 31 of 1997 concerning Military Courts



From the perspective of criminal law, KUHPM can be categorized as a special criminal law, because it is designed and enforced for specific people, namely, members of the armed forces. By definition, KUHPM is a criminal law code that is enacted specifically for members of the Armed Forces, meaning that this criminal law regulates an act that can only be committed by certain persons (Soldiers).

Article 6 of the Criminal Procedure Code stipulates the types of punishment for a soldier who has been proven to have committed a criminal offense, namely:

1. Major convictions:
  - a. Death penalty;
  - b. Convicted borrowers;
  - c. Imprisonment;
  - d. closure penalty.
2. Additional punishments:
  - a. Dismissal from the civil service with or without disenfranchisement from entering the Civil Service;
  - b. Power derivative;
  - c. Deprivation of the rights mentioned in Article 35, first paragraphs number 1, 2 and 3 of the Code of Criminal Procedure.

In addition to the Criminal Code, in the Military Criminal Code (KUHPM) system, if a member of the Military is proven guilty of committing a crime in addition to being sentenced to the main sentence with the judge's considerations, he can be sentenced to additional punishment in the form of dismissal from Military service. For the Military member, dismissal from Military service is the end of his career and dedication in the Indonesian National Army (TNI) which will consequently be followed by the termination of the rights received so far. Therefore, the judge must consider carefully before giving additional punishment in the form of dismissal. These considerations include whether or not the military member can be trained and improved so that the imposition of additional punishment in addition to having to be in accordance with applicable legal provisions, should be avoided as much as possible considering the state's losses which have spent a lot of money to educate a military member, especially an Officer. However, a Military member who can no longer be trained and improved is usually dismissed from Military service.<sup>7</sup>

As in the case of the murder committed by a TNI AL soldier, Serda Pom Adan Aryan Marsal against a TNI-AL Bintara Casis from Nias, the case was widely discussed and went viral on social media. The case has been tried and decided by the Panel of Judges of the Military Court I-03 Padang and has permanent legal force, where the Defendant has been found legally and convincingly guilty of committing

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<sup>7</sup> Sugiono, et al, Additional Imposition in the Form of Dismissal from Military Service at Military Court III-14 Denpasar, *Kertha Widya Journal*, Vol. 3 No.1 August 2015, p. 111.



the crime of premeditated murder as regulated and threatened in Article 340 of the Criminal Code with a principal sentence of life imprisonment and an additional sentence of dismissal from military service.

As previously stated, for military members in addition to general provisions (KUHP) there are also special provisions in the Criminal Code. The specificity of the Criminal Code is apparent in terms of the types of additional sentences that differ between the Criminal Code and the Criminal Code. The additional sentence of dismissal from military service is regulated in Article 6 letter b ke-1 of the Criminal Code in conjunction with Article 26 of the Criminal Code. Where the technicalities of its imposition are left to the judge through special considerations which provisions are not in the Criminal Code. Of course, dismissal from military service as an additional criminal sanction is optional for the judge and is not imperative, meaning that the judge can consider according to his assessment before deciding to give an additional sentence of dismissal to the defendant. So, whatever the problems are for the panel of judges in compiling considerations related to what legal facts are the basis for imposing an additional criminal penalty of dismissal from military service in the case of Serda Pom Adan Aryan Marsal, it will be very interesting to study in this article.

## B. Methods

Based on the research title and background above, the approach method used in writing is Normative. Where the type of normative research method will examine the law that is being conceptualized as a norm or rule that will be used as a reference in acting and making decisions related to the problems that the author will discuss. The source of secondary legal materials used consists of legal materials that provide theory and support for the author's analysis. Data collection techniques and legal materials used in this research are library research, namely document studies carried out by reading, quoting, analyzing laws and regulations.

## C. Discussion

The Indonesian National Army has its own military court. Article 5 paragraph (1) of Law Number 31 of 1997 concerning Military Justice states that military justice is the exercise of judicial power within the armed forces to uphold law and justice with due regard to the interests of the implementation of the defense and security of the State. Therefore, every member of the military must submit to and comply with the legal provisions applicable to the military, such as the Military Criminal Code (KUHPM) and other regulations.<sup>8</sup> Military judges can impose various types of criminal sanctions, including dismissal for defendants found guilty of a criminal offense. Dismissal is one of the most severe types of sanctions, which not only

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<sup>8</sup> Syahrul Nasution, et al, Application of Dismissal Sanctions for TNI Soldiers Proven to Have Abused Narcotics: Study Number 76-K/Pm Iii-16/Ad/Ix/2021, *Journal of Lex Generalis*, Vol. 4 No. 2, February 2023, pp. 255.



removes the defendant's rights as a military member, but also affects their reputation and future.<sup>9</sup> Therefore, dismissal as an additional punishment must be decided through careful consideration in accordance with the provisions contained in the Military Criminal Code (KUHPM).

Article 26 of the Military Criminal Code (KUHPM) explicitly provides guidelines to judges in terms of imposing additional punishment of dismissal, the formulation is as follows:

1. Dismissal from military service with or without deprivation of the right to enter the armed forces, other than as provided for in Article 39, may be pronounced by the judge concurrently with every verdict of death or imprisonment against a member of the military who, by reason of the crime committed, in his opinion is no longer fit to remain in the military.
2. Such dismissal shall by law result in the loss of the rights acquired by him from the Armed Forces during his former service, with the exception that the right to pension shall only be lost in the cases mentioned in the pension regulations applicable to convicted persons.
3. If the dismissal coincides with the revocation of the right or to enter the Armed Forces, it shall also legally result in the loss of the right to possess and wear stars, signs of honor, medals or other identifying marks, insofar as the latter two were acquired in connection with his former service.<sup>10</sup>

## 1. Basic Considerations of Judges in Imposing Criminal Verdicts in Murder Cases

### 1) Juridical Consideration

Juridical considerations are considerations made by the judge based on factors revealed in the trial and determined by the Law as aspects contained in the decision.<sup>11</sup> Juridical considerations include:<sup>12</sup>

#### a. Prosecutor's Indictment

The crime of premeditated murder is regulated in Article 340 of the Criminal Code Jo Article 55 paragraph (1) to 1 of the Criminal Code. In

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<sup>9</sup> Arif Fahmi Lubis, Sanctions for Dismissal with Disrespect of TNI Soldiers on the Consideration of Military Judges due to Unfitness to Serve Again in the Military Environment, *Journal of Administrative Media*, Vol. 6 No. 2, October 2021, p. 6.

<sup>10</sup> S.R. Sianturi 1989, *Principles of Criminal Law in Indonesia and its application*, 3rd ed, (Jakarta: AHAEM-PETEHAEM Alumni) p. 92. 92.

<sup>11</sup> Nurhafifah and Rahmiati, Judges' Consideration in Sentencing Related to Aggravating and Mitigating Matters, *Kanun Journal of Legal Science*, No. 66, August 2015, pp. 347.

<sup>12</sup> Ike Setyarini, Basic Considerations of Judges in Imposing Criminal Decisions in Cases of Counterfeit Money Distribution (Study at the Malang District Court),

in <https://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/836/823>,

visited December 10, 2024, at 17.24 WIB.



general, the indictment is defined by legal experts in the form of a deed containing a formulation of the criminal offense charged to the defendant, the formulation is drawn or concluded from the results of the investigation examination in connection with the Article of the criminal offense violated and charged against the defendant, and the indictment is the basis for examination for the judge in the Court session.<sup>13</sup> The judge basically cannot examine and try outside the scope of the indictment, this means that the judge cannot examine, try and decide a criminal case outside of what is stated in the indictment. Thus the indictment serves a central function in court proceedings in criminal cases. The consequence is that if there is an error in the preparation of the indictment, it can result in a person being acquitted by the Court even though the person is proven guilty of committing a criminal offense.

b. Witness testimony

According to Article 1 number 28 of Law No. 31 of 1997, witness testimony is a tool in a criminal case in the form of a statement from a witness about a criminal event that he himself heard, saw, and experienced, stating the reasons for his knowledge.<sup>14</sup>

Based on decision No. 60-K/PM.I-03/AL/VIII/2024, the Oditur presented witnesses consisting of 9 witnesses.

c. Statement of the defendant

According to Article 189 paragraph (1) of the Criminal Procedure Code, the statement of the defendant is what the defendant states in court about the actions he committed or what he knows or experiences himself<sup>15</sup>. According to decision No. 60-K/PM.I-03/AL/VIII/2024, the defendant Serda Pom Adan Aryan Marsal admitted to having committed premeditated murder. Based on the defendant's testimony, the murder began in 2022 when the victim was trying to join the Navy. Then the victim's family met the defendant to ask for help to get the victim into the TNI. The perpetrator asked the witness to prepare Rp 200,000,000 if the situation was good but if not to prepare Rp 250,000,000 as a security deposit. The defendant convinced and seduced the victim's family and suggested that the victim join a tutoring program and asked for Rp. 2,000,000 for tutoring fees. The defendant lied to the victim's family that he had an uncle in Padang City who could help the victim to graduate, but this was just a trick to convince the victim's family to trust the

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<sup>13</sup> Muhamad Rizky Kurniawan, et al, Analysis of the Process of Drafting a General Criminal Indictment Against Cases of Narcotics Abuse in Case Register Number: PDM-31/PSW/ENZ.2/06/2022 at the Pringsewu District Attorney's Office, JHM, Vol. 5 No. 2, November 2024, pp. 131.

<sup>14</sup> Article 1 Number 28 of Law No. 31 of 1997 concerning Military Courts

<sup>15</sup> Article 189 paragraph (1) of Law No. 31 of 1997 concerning Military Courts



defendant and give them some money. The defendant then conducted coaching approximately 2-3 times and asked the victim's family for Rp. 6,700,000, which was received in stages. In order to help the victim qualify for the Navy, the defendant asked a classmate named APM Sabil Ma'ruf to help pass his student, the cost could be arranged and he asked for help to be conveyed to the doctor. After a medical examination the victim was declared unsuccessful due to a small tooth that had grown in between his main teeth. The victim and the witness lost contact and contacted the defendant to ask about the victim's eligibility. The witness threatened the defendant that if there was no certainty about the victim then just return the money that had been given. If the defendant could not guarantee the victim's graduation and the money could not be returned, the witness would report to the Nias Navy. Hearing this threat, the defendant felt worried and went to the witness to persuade him to take the victim to Padang.

On December 26, 2022, the defendant sent a photo of the victim to the victim's family wearing a TNI PDL uniform that had been previously prepared as if the victim was leaving for education. The defendant and the victim went to Solok City to pick up the witness-4 named Muhammad Alfian Adrian who was referred to as witness-4. On the way after picking up witness-4, the defendant headed towards Lake Biru Talawi, Sawahlunto City. At approximately 5.30pm when the vehicle stopped for the third time at a rubber plantation in Sungai Betung Sub-Village, Datarmansiang Village, Talawi Sub-District, Sawahlunto City, the defendant pretended to get out of the car to look for a telephone line, then the victim got out to urinate. At the same time, the defendant grabbed the victim by the neck from behind and then witness-4 stabbed the victim 3-4 times in the stomach with a knife. Then the defendant dragged the victim's feet into a ravine next to the scene of the crime, the victim moaned in pain and then the defendant immediately choked the victim and covered her mouth with his hand until she could no longer move, then dragged the victim into the ravine and took the victim's necklace and covered the body with leaves so that the body would not be seen by others. The depth of the ravine was approximately 4-5 meters.

d. Evidence

Based on decision No. 60-K/PM. I-03/AL/VIII/2024, the evidence in this criminal case, namely:

In the form of a letter:

- a) 1 (one) photo of Serda Adan Aryan Marsal's ID card.
- b) 1 (one) photo of the victim Alm. Iwan Sutrisman Telaumbanua
- c) 1 (one) photo of the condition of the body when found
- d) 1 (one) photo of the location where the body was found



- e) 1 (one) photo of the Defendant picking up the victim before the victim left for Padang on December 16, 2022
- f) 1 (one) photo of the car used at the time of reconstruction (not the car used at the time of the murder and a photo of the room where the victim was in Padang
- g) 2 (two) sheets of Police Report on the loss of Avanza E 13 MT car in 2017
- h) 1 (one) photo of the location of the disposal of the victim's knife evidence, wallet and cellphone
- i) 3 (three) sheets of Report on the Incident of the Discovery of Mr. X's body from the Talawi Police
- j) 2 (two) sheets of Visum Et Repertum Results of Mr. X's corpse Number 01A/ER/I/2023/Bhayangkara Hospital dated January 4, 2023.
- k) 1 (one) photo of the autopsy of the hospital. Bhayangkara TK III (l) 1 (one) copy of the letter of approval for the demolition of the corpse/grave
- l) 1 (one) photocopy of the Minutes of the Handover of the Body
- m) 3 (three) sheets of DNA Test Results Letter of the Center for Medicine and Health of the National Police, Bureau of Medical and Health Laboratories, DNA Laboratory Number R/24040/IV/2024/Bidlab DNA dated April 30, 2024
- n) 8 (eight) sheets of evidence of transfer of the victim's family to the defendant Serda Adan Aryan Marsal
- o) 28 (twenty-eight) printed sheets of savings account statements in the name of Antonius Piaman Telaumbanua.
- p) 2 (two) bundles of documents and files belonging to Mr. Iwan Sutrisman Telaumbanua (Alm).

In the form of goods:

- a) a1 (one) Vivo mobile phone belonging to Serda Adan Aryan Marsal
  - b) 1 (one) BRI savings book in the name of Adan Aryan Marsal Account No. 3143-01-029446-53-3.
  - c) 1 (one) BRI savings book in the name of Antonius Piaman Telaumbanua Norek. 526601-013984-50-1.
  - d) 1 (one) ATM belonging to Serda Adan Aryan Marsal
  - e) 1 (one) piece of PDL shirt
  - f) 1 (one) pair of PDL pants
  - g) 1 (one) pair of PDL shoes
  - h) 1 (one) car rental logbook for Avanza
- e. The articles in the Criminal Code regarding premeditated murder are Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) sub-paragraph 1 of the Criminal Code, which states, "Jointly and intentionally with premeditation to take another person's life."



## 2) Normative Consideration

### a. Criminal acts

Criminal acts, according to Simons, are actions or deeds of humans that are contrary to the law, punishable by law, and committed by individuals who can be held accountable and are subject to punishment.<sup>16</sup>

Elements of a criminal act, namely:

- a) The presence of a subject, namely human actions
- b) The act is unlawful (Wederrechtelijk)
- c) That act is punishable by law under the Penal Code
- d) The act was committed by a person who is capable of being held accountable.<sup>17</sup>

From the elements above, when connected with the actions of the defendant in the Military Court Decision No. 60-K/PM.I-03/AL/VIII/2024, it can be seen from the decision, the elements of the criminal act, namely:

- i. The existence of a subject, namely every person who holds the same position as a supporter of rights and obligations, not carried out by a legal entity. According to the verdict, the identity of the defendant is named Adan Aryan Marsal, male, and an Indonesian citizen.
- ii. An unlawful act (Wederrechtelijk) means contrary to the law, or not in accordance with legal prohibitions or obligations, or attacking an interest protected by law.
- iii. That act is punishable by law under Article 340 of the Criminal Code concerning Premeditated Murder, which states, "Anyone who intentionally and with premeditation takes the life of another person shall be punished for premeditated murder with the death penalty or life imprisonment or for a certain period, at most twenty years." Thus, the defendant's actions fulfill the elements of a criminal act because the actions committed by the defendant are prohibited and punishable by law.
- iv. The act was committed by a person capable of being held accountable, which is a normal mental condition and has the ability to distinguish between good and bad. In the ruling read by the panel of judges, the judge stated that Serda Adan Aryan Marsal did not find any circumstances that could absolve him of criminal responsibility, either as a justification or an excuse.

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<sup>16</sup> Annisa, Criminal Offenses: Definition, Elements, and Types, Faculty of Law UMSU, <https://fahum.umsu.ac.id/tindak-pidana-pengertian-unsur-dan-jenisnya/>, visited December 5, 2024, at 14.23 WIB.

<sup>17</sup> Fitri Wahyuni, BASICS OF CRIMINAL LAW IN INDONESIA, 1st ed., (South Tangerang: Nusantara Persada, Utama 2017), pp. 45-52



Therefore, the defendant must be held accountable for his actions, being declared guilty and sentenced to a life imprisonment as the main penalty and additional punishment of being dismissed from military service by the Padang Military Court I-03.

b. The element of fault of the criminal act

Element of criminal liability Mistakes are closely related to a person's intention in committing an act. To be punished, a person must commit a prohibited act accompanied by their intent.<sup>18</sup> A defendant can be said to be guilty if their actions meet the elements outlined in the applicable article. According to Decision No. 60-K/PM.I-03/AL/VIII/2024, the defendant was found guilty because he met the elements of Article 340 of the Criminal Code regarding premeditated murder. The elements are:<sup>19</sup>

- a) Whoever or any person. In the trial, the Prosecutor presented a man named Serda Pom Adan Aryan Marsal with all his identities as stated in the indictment that had been read in court, and upon the reading of the defendant's identity, the defendant confirmed it.
- b) Intentionally. The defendant's actions involved choking the victim from behind, after which witness-4 immediately stabbed the victim in the stomach 3-4 times with a knife. Then the defendant dragged the victim's legs to the ravine next to the crime scene. This fulfills the element of intent.
- c) With prior planning. The defendant, along with witness-4, around 5:30 PM WIB, when stopping the vehicle for the third time at the rubber plantation in Dusun Sungai Betung, Desa Datarmansiang, Kec. Talawi, Kota Sawahlunto, pretended to get out of the car to look for a phone signal, then the victim got out to relieve himself. Previously, the defendant had attempted to commit murder at witness-3's house, but it failed.
- d) Taking another person's life. After the stabbing action assisted by witness-4, the victim groaned in pain, then the defendant immediately strangled the victim's neck and covered his mouth with his hand until he stopped moving, then dragged the victim to the ravine and took the victim's necklace and covered the body

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<sup>18</sup> Mulyadi Sihombing, The Meaning of Mens Rea in Criminal Law, in <https://www.hukumonline.com/klinik/a/arti-mens-rea-dalam-hukum-pidana-lt6736aa8d70465/>, visited December 24, 2024, at 13.17 WIB.

<sup>19</sup> Pieter Salvadoris and Erni Dwita Silambi, "Proof in Premeditated Murder Crimes from the Perspective of the Criminal Code", Restorative Justice Journal, Vol. 3 No. 1, May 2019.



with leaves so that the body would not be seen by others. The depth of the ravine is approximately 4-5 meters.

From the above elements, the defendant's actions have been legally and convincingly proven guilty of committing a criminal act as in the indictment, while in the defendant there is no justification for his actions or reason for forgiveness for his mistake, then the defendant must be punished and declared by the I-03 Padang Military Court because the defendant's actions have fulfilled all the elements of Article 340 of the Criminal Code concerning Premeditated Murder.

- c. Criminal motives and objectives. In decision No. 60-K/PM. I-03/AL/VIII/2024, the defendant's motive for committing the crime was because he panicked and was charged by Witness-8 to return the money received from the victim's family and was afraid that his actions would be reported so that Danlanal Nias would find out.
- d. How to commit a criminal act. In decision No. 60-K/PM. I-03/AL/VIII/2024, the way the defendant committed the crime was by twisting the victim's neck from behind and then witness-4 immediately stabbed the victim in the abdomen 3-4 times using a knife. Then the defendant pulled the victim's leg into the ravine next to the crime scene.
- e. The consequences arising from criminal acts. The consequences caused by the defendant's actions can damage the image of the TNI in general, especially the TNI AL in the eyes of the public, resulting in Mr. Losawato Telaumbanua (Witness-7) losing his son's life forever and suffering a monetary loss of Rp. 555,446,000.00.

## **2. Causes of Additional Punishment in the Form of Dismissal from Military Service**

Dismissal as an additional penalty in the KUHPM is regulated in several Articles that provide guidelines for military judges in imposing such sanctions. The KUHPM helps military judges make decisions about dismissal if the defendant is proven to have committed a crime that can damage the dignity or integrity of the military institution or that clearly contradicts the duties and honor of a soldier. Dismissal as an additional penalty is usually given when the defendant commits a serious crime that harms the interests of the state or military institution, such as premeditated murder, treason, or serious violations of military regulations. Dismissal has a broader purpose beyond being a form of punishment, namely to maintain the integrity and credibility of state institutions or the institutions concerned.

In the criminal justice system, military judges have significant authority in deciding cases. One form of judgment that can be imposed by a judge is dismissal, which is an addition to the main penalty in certain criminal cases. This dismissal is generally given as a consequence of violations committed by a military personnel who has committed a criminal offense. Therefore, it is important for military judges to have a strong and rational basis in imposing dismissal sentences, so that the decisions made



are in accordance with applicable legal norms and do not violate the principles of justice.

In addition, in deciding to impose dismissal, the military judge must consider aspects of compliance, duty, and alignment with the facts revealed during the trial. Dismissal should not be used as a tool for revenge or merely to serve as a deterrent, but rather should be based on thorough legal consideration and valid evidence. Military judges must prioritize the principle of justice and ensure that every decision rendered can be morally and legally accountable, as well as have a positive impact on the judicial system as a whole.

The basis for military judges in imposing additional penalties in the form of dismissal is regulated in Article 62 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI), which states, "A soldier is dishonorably discharged due to having a character and/or actions that clearly harm military discipline or the TNI"<sup>20</sup>, and Article 26 of the Military Criminal Code (KUHPM) paragraph (1), which states, "Dismissal from military service with or without the revocation of the right to enter the Armed Forces, other than as stipulated in Article 39, can be imposed by the Judge along with any sentence of death or imprisonment for a military person who, based on the crime committed, is considered no longer suitable in the military"<sup>21</sup>.

The basis for military judges in deciding additional penalties such as dismissal is not only based on statutory regulations but also on the principles of justice, compliance, and integrity, in order to ensure that the decisions rendered are in accordance with legal norms and uphold the honor of military institutions. In this case, military judges adhere to the principle of "Lex Specialis derogat Leg Generali," which means that specific regulations governing military offenses take precedence over general regulations. In military criminal cases, judges must refer to specific regulations governing the conduct and discipline of TNI soldiers.

Dismissal as an additional penalty in military criminal cases aims to maintain the integrity and image of the TNI, as well as to ensure that the guilty soldier no longer holds a position in that noble organization. In addition, this dismissal also serves to provide a deterrent effect, both for the individual concerned and for other soldiers, that serious violations of military law or ethics will result in very serious consequences. After the defendant is sentenced by the judge and the verdict has become legally binding (BHT), the execution of imprisonment or detention accompanied by dismissal from military service is carried out by the Prosecutor by handing over the Convicted to the General Prison Institution (LPU), along with a cover letter and a Convicted Transfer Report.<sup>22</sup>

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<sup>20</sup> Article 62 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI)

<sup>21</sup> Article 26 of Law Number 31 of 1997 concerning Military Courts

<sup>22</sup> Administrative Guidelines of the Oditurat in the Resolution of Criminal Cases, (Indonesian National Armed Forces Legal Development Agency: 2009), p. 39



The brutal act consisting of premeditated murder committed jointly, fraud, and concealing a death committed jointly, with the main criminal threat being life imprisonment and an additional penalty of dismissal from military service. In this murder case committed by the defendant, many parties feel aggrieved, not only in terms of material and immaterial losses but also because the defendant's actions resulted in the loss of a life and damaged the image of the military, especially the Navy, in the eyes of the public. Additionally, the defendant's actions are contrary to the Sapta Marga, the Soldier's Oath point 2 "Obey the law and uphold military discipline," and the 8 Obligations of the TNI point 6 "Never harm the people." The defendant's actions were very cruel and inhumane because they premeditatedly took someone else's life.

#### D. Conclusion

The consideration of the military judge in imposing an additional penalty of dismissal on the defendant, with a focus on the murder case committed by Sergeant Pom Adan Aryan Marsal. In its considerations, the panel of judges imposed this dismissal not only as an additional punishment for the proven actions committed by the defendant but also because the dismissal is seen as a form of the defendant's accountability to the law, an important step to maintain the reputation and integrity of the military institution, and to serve as a deterrent effect for other soldiers. In the decision-making process, military judges must consider various aspects, including valid evidence, witness testimonies, and principles of justice, to ensure that the verdict reached is in accordance with the applicable legal norms.

In addition, dismissal as an additional punishment is regulated in the Military Penal Code (KUHPM) and is carried out after the decision has permanent legal force. Military judges not only adhere to legal regulations but also must consider the values of propriety and integrity to uphold the honor of the TNI. The criminal actions committed by the defendant not only harm the individual but also tarnish the image and values of military service, making dismissal a necessary step to uphold discipline within the military environment.



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