

## A REVIEW OF ISLAMIC CRIMINAL LAW ON THE CRIME OF MILITARY DESERTION

Meisarah Tri Anjani<sup>1\*</sup>, Iwan<sup>2</sup>

<sup>1</sup> Universitas Islam Negeri Sumatera Utara, <sup>2</sup> Universitas Islam Negeri Sumatera Utara  
e-mail: meisarah2005@gmail.com\*, e-mail: iwan@uinsu.ac.id

\*Corresponding Author

▪ Received: 15-05-2025

▪ Revised: 13-06-2025

▪ Accepted: 17-06-2025

### Abstract

*Desertion is one of the most common military cases tried in Indonesian military courts. So that this has a negative impact, both on the military unit, society, and the state. The increase in desertion cases raises a perspective that the positive law governing criminal sanctions for desertion does not have a deterrent effect or preventive effect on military personnel. Therefore, the purpose of this research is to examine military desertion in the perspective of Islamic criminal law with a focus on the form of desertion crime, its causative factors, and criminal sanctions. This research uses a normative research method (legal research) with a comparative approach. The results of this study indicate that desertion in positive law is a pure criminal offense things only military personnel have the ability of committing. Whereas in Islamic criminal law, desertion can apply to all believers, unless there is an excuse that makes it not obliged to jihad. The criminal sanction for desertion in positive law is in the form of imprisonment and can also be coupled with punishment in the form of dismissal from military service. While in Islamic criminal law, the criminal sanction is in the form of ta'zir punishment in the form of social sanctions, such as perpetrators who run away from the battlefield are prohibited from talking to all Muslims for fifty days. Based on several opinions of fiqh scholars, ta'zir punishment aims to dissuade the offender and prevent the occurrence of a prohibited act.*

**Keywords:** Desertion, Islamic Criminal Law, Military.

### Abstrak

Desersi merupakan salah satu perkara militer yang paling banyak disidangkan di pengadilan militer Indonesia. Sehingga hal ini menimbulkan dampak negatif, baik itu kepada kesatuan militer, masyarakat, maupun negara. Meningkatnya kasus desersi memunculkan suatu perspektif bahwa hukum positif yang mengatur terkait sanksi pidana desersi tidak menimbulkan efek jera maupun efek preventif pada prajurit militer. Maka daripada itu, tujuan dari penelitian ini adalah untuk mengkaji desersi militer dalam perspektif hukum pidana Islam dengan fokus pada bentuk tindak pidana desersi, faktor penyebabnya, dan sanksi pidananya. Penelitian ini menggunakan metode penelitian normatif (*legal research*) dengan pendekatan komparatif. Hasil penelitian ini menunjukkan bahwa desersi dalam hukum positif merupakan tindak pidana murni yang hanya bisa dilakukan oleh prajurit militer saja. Sedangkan dalam hukum pidana Islam, desersi bisa berlaku untuk seluruh mukmin, kecuali ada uzur yang membuatnya tidak diwajibkan untuk berjihad. Sanksi pidana desersi dalam hukum positif berupa pidana penjara dan bisa juga ditambah dengan hukuman berupa dipecat dari dinas militer. Sementara dalam hukum pidana Islam, sanksi pidananya berupa hukuman *ta'zir* dalam bentuk sanksi sosial, seperti pelaku yang lari dari medan perang dilarang untuk berbicara dengan seluruh kaum muslimin selama lima puluh hari. Berdasarkan beberapa pendapat ulama fikih, hukuman *ta'zir* bertujuan untuk memberikan efek jera kepada pelaku dan pencegahan agar tidak terjadinya suatu perbuatan yang dilarang.

**Kata kunci:** Desersi, Hukum Pidana Islam, Militer.

## INTRODUCTION

Indonesia is a country with a legal basis related to the military whose function is to maintain discipline and peace in the military environment. In the context of military law, there are two classifications related to criminal offences: mixed military offences and pure military offences. Pure military offences or also known as *zuiver militaire delicts* are criminal offences or prohibited acts that can only be committed by military personnel.<sup>1</sup> This is due to the specific nature, where one of the criminal offences is the offence of desertion.

The crime of desertion is an act committed by a soldier who deliberately leaves his military service obligations or defects or sides with the enemy. The act of desertion is a typical act of a soldier who leaves his troops or unit or ship area without a valid authorisation from his commanding officer.<sup>2</sup> Desertion is also one of the most common military cases tried in military courts from the past until now. Abbas Said, a former Supreme Court judge, once questioned Mayjend Burhan Dahlan in 2012 about desertion cases that were included in many cassation cases at the Supreme Court.<sup>3</sup> Desertion is not only an issue in Indonesia, but also widely reported in other countries. As Ukraine is a country currently in conflict, many soldiers are reported to have deserted and left the battlefield. Roman Likhachev, a lawyer from the Veterans and Family Support Centre, stated that more than 100,000 Ukrainian soldiers have deserted or abandoned their military units.<sup>4</sup>

The impact of this desertion certainly causes a loss, be it a loss to the military unit, society or the state. According to the Ministry of Defence's Budget Report, the Ministry of Defence designs and establishes several priority programmes, including programmes to increase defence forces and professionalism in soldiers, and implement the most important programmes, the Ministry of Defence requires adequate distribution of funds to achieve ambitions and targeted results in the field of defence.<sup>5</sup> Therefore, when military personnel desert, it substantially affects the national economy, contributing to financial losses for the state.

Reviewing the act of desertion under Islamic criminal law, it falls into the scope of jihad. Where jihad is textually described as an act of warfare against Muslim enemies and seeking

---

<sup>1</sup>Nikmah Rosidah, *Hukum Peradilan Militer* (Bandar Lampung: AURA, 2019), h. 44.

<sup>2</sup>Andi Muhammad Darlis, *Terminologi Militer* (Jakarta: Balai Pustaka, 2021), h. 63.

<sup>3</sup>Mys, "Kasus Desersi Dan Susila Banyak Menjerat Prajurit," accessed November 14, 2024, <https://www.hukumonline.com/berita/a/kasus-desersi-dan-susila-banyak-menjerat-prajurit-lt4fa20bdf8e6d6/>.

<sup>4</sup>Edwin Shri Bimo, "Tentara Korea Utara Berseragam Rusia Menuju Ukraina, Kasus Desersi Militer Ukraina Melonjak," accessed November 21, 2024, <https://www.kompas.tv/internasional/549936/tentara-korea-utara-berseragam-rusia-menuju-ukraina-kasus-desersi-militer-ukraina-melonjak>.

<sup>5</sup>S. A. E. Mujibburahman, "Catatan Atas Anggaran Belanja Kementerian Pertahanan," *Budget Issue Brief Politik Dan Keamanan* Vol. 01, no. 1 (2021), h. 1

Allah's mercy.<sup>6</sup> More specifically, when discussing the military, it falls into the physical jihad. However, when talking about fighting on the battlefield, it enters the discussion of qital, which means war.<sup>7</sup> Yusuf Qardhawi stated that the meanings of the words jihad and qital are different, both in terms of language and sharia, where jihad has a wider scope than qital which is more specific. This is because jihad is not only carrying out war, but jihad can be carried out with hands, property, and speech.<sup>8</sup>

Regarding the activities of defending the country carried out by military forces, they are part of the group of people who are jihad. This is reflected in their important role as soldiers who are at the forefront of defending the country's security from all forms of external and internal threats. These military forces are trained physically and mentally to become the chosen people who are prepared to defend the country's sovereignty from military attacks, and receive financial support from the state.<sup>9</sup>

The basis of Islamic criminal law that forbids the act of fleeing from the battlefield can be seen in the hadith narrated by Abu Hurairah that the Prophet said:

اجْتَنِبُوا السَّبْعَ الْمُفْسِدَاتِ قَالُوا وَمَا هُنَّ يَا رَسُولَ اللَّهِ ؟ قَالَ الشِّرْكُ بِاللَّهِ وَالسِّحْرُ وَ قَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَأَكْلُ الرِّبَا وَأَكْلُ مَالِ الْيَتِيمِ وَالتَّوَلَّى يَوْمَ الرَّحْفِ وَقَذْفُ الْمُحْصَنَاتِ الْعَافِلَاتِ الْمُؤْمِنَاتِ

“Avoid seven destructive things!” The Companions asked, “What are these, O Messenger of Allah?” He replied, “Shirk to Allah, sorcery, killing a soul forbidden by Allah except for a justifiable reason, eating usury, eating the property of orphans, leaving the battlefield, and accusing a good believing woman of adultery.” (H.R Bukhari).<sup>10</sup>

The punishment is also different between Islamic criminal law and positive law. This is because in positive law, desertion is a pure criminal offence. Whereas in Islamic criminal law, running away from the battlefield is not referred to as a pure criminal offence.

Based on the description above, the author finds that between Islamic criminal law and positive law there are interesting differences in views regarding the crime of desertion. Where between the two laws it turns out that they have different legal provisions in determining a criminal offence of desertion committed by a military soldier. Thus, the difference makes the author interested in conducting in-depth research and making it a discussion of the criminal

<sup>6</sup>Munajat, “Religion and Nationalism in Shaping the Fiqh of Armed Jihad: A Lesson to the Indonesian National Counterterrorism Policy,” *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022): 311–34, <https://doi.org/10.15408/ajis.v22i2.26130>.

<sup>7</sup>Ahmad Sarwat, *Seri Fiqih Kehidupan (17): Jihad* (Jakarta: DU Publishing, 2016), h. 37.

<sup>8</sup>Yusuf Al-Qardhawi, *Fiqh Jihad: Sebuah Karya Monumental Terlengkap Tentang Jihad Menurut Al-Qur'an Dan Sunnah* (Bandung: Mizan Media Utama, 2009), h. 72.

<sup>9</sup>Syarifuddin, *Militer Dalam Perspektif Al-Qur'an: Relevansi Komsep Militer Rasulullah Dan Implementasi Dalam Kepemimpinan TNI* (Jakarta: PTIQ Press, 2018), h. 29.

<sup>10</sup>Al-Bukhari, *Sahih Al-Bukhari. Terj. Muhammad Muhsin Khan* (Riyadh: DARUSSALAM, 1997), h. 34.

offence of desertion committed by a military soldier. To conduct in-depth research and make it a research discussion. Therefore, the author would like to raise the issue in a scientific work in the form of a journal entitled *Review of Islamic Criminal Law Against the Crime of Military Desertion*.

This research has the following main problems: 1) What is the form of desertion crime in the study of Islamic criminal law; 2) What are the factors causing the criminal offence of desertion committed by a military soldier; and 3) How is the form of criminal sanction regulated in Islamic criminal law related to the crime of desertion. These three problems aim to examine military desertion from the perspective of Islamic criminal law with a focus on the form of desertion, the factors that cause it, and the criminal sanctions.

## **METHOD**

This research uses a type of normative research method (legal research). This research is based on legal materials, including books, laws and regulations, court decisions or decrees, legal theories, and legal expert opinions.<sup>11</sup> This research uses a comparative approach that aims to examine the review of Islamic criminal law related to the crime of desertion in positive law, as well as to find differences and similarities between the two laws. The data collection method in this research uses the library research method through analysis and study of written sources to obtain relevant information by reading and recording the results of the analysis, identification, and study. The data analysis in this research uses qualitative analysis which provides an overview (description) in describing and explaining the data found in the research.

## **RESULTS AND DISCUSSION**

### **A. THE CRIME OF DESERTION IN ISLAMIC CRIMINAL LAW**

Under positive law, desertion refers to the act of a military soldier who is absent or withdraws from their service obligations in the absence of permission from the commander of his troops. Desertion in positive law is divided into 2 (two) parts, namely: a) Absence in time of peace; b) Absence in time of war.<sup>12</sup> Meanwhile, the crime of desertion from the perspective of Islamic criminal law is leaving the battlefield or running away from the battlefield. This can be seen from the hadith narrated by Abu Hurairah and listed in the book

---

<sup>11</sup>Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), h. 47-48.

<sup>12</sup>Astri Dewi Setyarini and Irwan Triadi, "Pelanggaran Desersi Pada Prajurit Militer," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 5 (2023): 55–62.

of Sahih Bukhari number 2766. The meaning in the Hadith is that leaving the battlefield is something that must be avoided.<sup>13</sup>

Military desertion in Islamic criminal law falls into the scope of physical jihad. Where a soldier is obliged to carry out jihad by joining the Muslim army to fight after the leader calls for jihad.<sup>14</sup> Desertion is an act that is the same as ignoring the call for jihad. This is told as in the time of Moses a.s with his people the Children of Israel, where Moses a.s called on his people to jihad to enter the holy land (Palestine) that Allah had determined for them. However, the people's reply to Musa a.s was that they were reluctant to jihad and instead told Musa a.s to go with his Lord Musa a.s to fight the inhabitants of the holy land. Thus, Allah punished the Children of Israel by making them lose for 40 (forty) years on Mount Sinai, and they could not enter the sanctified land.<sup>15</sup> In addition to the story of the Prophet Musa a.s, there is also a story about desertion during the Prophet's time and during other Islamic dynasties, namely:

#### 1. The Battle of Uhud

In this phase of the war there was an act of defection committed by Abdullah ibn Ubay and a third of his troops. The defection was carried out when the two armies, namely the Muslim army and the Quraish army, had almost met each other. Abdullah ibn Ubay told the Apostle that the Apostle always ignored his opinion. So, he left the battle and left the Muslims. In fact, the real reason was that he wanted to make an evil plan, namely, to shake the feelings and unrest in the Muslims so that the Messenger's troops were destroyed.<sup>16</sup> Abdullah ibn Ubay's actions if in positive law, are the same as "*avoiding the danger of war and crossing to the enemy*" as stated in Article 87 paragraph (1) of the Military Criminal Code.<sup>17</sup>

#### 2. The Battle of Hunain

In this phase of the war, the Muslim army had fled the battlefield due to a surprise attack from the enemy. However, they reunited and gathered with the Prophet to

---

<sup>13</sup>Al-Bukhari, *Sahih Al-Bukhari. Terj. Muhammad Muhsin Khan*, h. 34.

<sup>14</sup>Wahbah Al-Zuhayli, *Fiqh Islam Wa Adillatuhu* (Damaskus: Dar al-Fikr, 2007), h. 26.

<sup>15</sup>Yusuf Al-Qardhawi, *Fiqh Jihad: Sebuah Karya Monumental Terlengkap Tentang Jihad Menurut Al-Qur'an Dan Sunnah*, h. 416.

<sup>16</sup>Shafiyurrahman. Al-Mubarakfuri, *Fase Perang Uhud. Terj. Umar Mujtahid* (Jakarta: Ummul Qura, 2022), h. 12-13.

<sup>17</sup>Pemerintah Indonesia, *Kitab Undang-Undang Hukum Pidana Militer (KUHPM) No. 39 Tahun 1947* (Jakarta: Pemerintahan Republik Indonesia, 2014), h. 16.

fight.<sup>18</sup> The event of the Muslim troops running away is similar to the act of desertion. However, when referring to the Qur'an surah al-Anfal verses 15-16, this condition is not an act of desertion. As Allah said,

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا زَحْفًا فَلَا تُوَلُّوهُمُ الْأَدْبَارَ (١٥)  
وَمَنْ يُوَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّفًا لِقِتَالٍ أَوْ مُتَحَيِّرًا إِلَى فِتْنَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ  
وَبِئْسَ الْمَصِيرُ (١٦)

“O you who have believed, when you meet the disbelievers who are attacking you, then do not turn your backs on them (retreat). Whoever turns his back on them (retreats) at that time, except to turn for the sake of war or to join another army, then indeed that person returns with the wrath of Allah, and his place is Hellfire. And very bad is the place of return.” (Q.S Al-Anfal: 15-16)

### 3. The Battle of Tabuk

In this phase of the war, many Muslims did not join the war with the Prophet. One of them was Ka'ab ibn Malik who was a companion of the Prophet and a person who was devoted to Islam. His absence at the battle of Tabuk was not due to an excuse, but because of the lack of readiness in his heart.<sup>19</sup> The act committed by Ka'ab ibn Malik includes desertion in positive law and is an act of leaving the battlefield in Islamic criminal law.

### 4. The Umayyad Dynasty

During the Umayyad dynasty, the act of desertion was committed by commander Sulaiman bin Hisham. Where, Sulaiman ran away from the battlefield during the battle against Marwan bin Muhammad. He did this because he saw that the troops he led were on the edge of defeat. The impact of Sulaiman bin Hisham's actions led to the killing of caliph Ibrahim bin al-Walid. While the Commander of Sulaiman bin Hisham bin Abdul Malik managed to escape to the region of Radmur and took refuge there.<sup>20</sup>

### 5. The Ottoman Empire

In 1683, Sultan Mehmed IV with the help of his vizier Kara Mustafa laid siege to the city of Vienna. However, at the time of the siege of Vienna, the Janissaries

<sup>18</sup>Shafiyurrahman. Al-Mubarakfuri, *Ar-Rahiq Al-Makhtum*. Terj. Faris Khairul Anam (Jakarta: Qisthi Press, 2014), h. 12-13.

<sup>19</sup>Muhammad Sa'id Ramadhan. Al-Buthi, *SIRAH NABAWIYAH: Analisis Ilmiah Manhajiah Sejarah Pergerakan Islam Di Masa Rasulullah Saw*. Terj. Aunur Rafiq Shaleh Tahmid (Jakarta: Robbani Press, 1999), h. 395.

<sup>20</sup>Takiruddin Haji Hassan, *Pemerintahan Kerajaan Bani Umayyah* (Malaysia: Perniagaan Jahabersa, 2012), h. 380.

(Ottoman Turkish military forces) experienced a lack of defense equipment facilities and caused the weak strength and defense of the troops.<sup>21</sup> This made the commander of the Janissaries, Kara Mustafa, run away or leave the battlefield. Thus, the Janissaries were forced to retreat from the siege.<sup>22</sup>

Based on the explanation of the criminal act of desertion from the history of Islamic civilization, there is a form of running away from the battlefield which is still allowed and not included in the major sin, namely where the conditions are like the Hunain war or the conditions when the Prophet sent an expeditionary army (*sariyyah*) to go to Najd. At the time of the expedition to Najd, the Muslim army was expected to be defeated by the enemy, so they returned to Medina and told the Messenger that they were among the people who had fled from the battlefield. However, the Prophet responded that they were not people who ran away from the battlefield, but troops who were turning back to continue jihad with the Prophet.<sup>23</sup> Thus, running away or retreating from the battlefield is allowed on condition of reorganizing the war strategy and rejoining the troops to prevent scattering.

## **B. FACTORS CAUSING MILITARY PERSONNEL TO COMMIT THE CRIME OF DESERTION**

The crime of desertion occurs because there are several factors that influence it, including:

### **1. Psychological Factors**

In carrying out military service, soldiers are trained according to their respective fields, such as the air force which trains using helicopters and fighter planes. However, this obligation in military service can cause psychological impacts, such as trauma on a soldier. For example, a Navy soldier was assigned to retrieve the bodies of four service members who died in a helicopter crash. The corpses were of course deformed and destroyed, which triggered psychological distress in the soldier and made him phobic about flying training for his military service.<sup>24</sup>

### **2. Economic Factors**

---

<sup>21</sup>Muhammad Ilhamsyah, "Siege of Vienna: Awal Kemunduran Dominasi Turki Utsmani Di Eropa," accessed April 29, 2025, <https://kumparan.com/muhammad-ilhamsyah-1710236477974406309/siege-of-vienna-awal-kemunduran-dominasi-turki-utsmani-di-eropa-22TfWbnyemi/full>.

<sup>22</sup>Alan Warwick Palmer, *The Decline and Fall of The Ottoman Empire* (New York: Barnes & Noble Books, 1994), h. 13.

<sup>23</sup>Al-Zuhayli, *Fiqh Islam Wa Adillatuhu*, h. 37.

<sup>24</sup>Muhammad Hadras, *Peran Psikologi Dalam Bidang Militer Dan Menjaga Keutuhan Negara Keutuhan Republik Indonesia* (Jakarta: PT Gramedia, 2023).

Financial difficulties within the family often contribute to this issue. In addition, the accumulation of personal debt among soldiers can lead to heightened stress. This condition is commonly attributed to the relatively modest salaries received by TNI personnel, which are insufficient to meet essential needs such as children's educational expenses.<sup>25</sup> Therefore, many heads of families who serve in the TNI seek income from other jobs, which causes negligence in their duties as soldier.<sup>26</sup>

### 3. Environmental Factors

Disciplinary rules in the military environment make soldiers feel unfree. As in the case of a soldier named David, who is the perpetrator of a recidivist desertion crime. David admitted that he wanted to be free and not be bound by military rules.<sup>27</sup> The strict rules in the military environment make some soldiers unable to live as members of the military.<sup>28</sup>

## C. SANCTIONS FOR THE CRIMINAL ACT OF DESERTION IN ISLAMIC CRIMINAL LAW

Islamic criminal law and positive law present differing views regarding the punishment for desertion. This is because, according to positive law, desertion applies exclusively to members of the military. Meanwhile, according to Islamic criminal law considers desertion applicable to all Muslims. This can be seen from the hadith narrated by Abu Hurairah,

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ مَاتَ وَلَمْ يَغْزُ وَلَمْ يُحَدِّثْ نَفْسَهُ  
بِهِ مَاتَ عَلَى شُعْبَةٍ مِنْ نِفَاقٍ (رَوَاهُ مُسْلِمٌ)

From Abu Hurairah that the Messenger of Allah said, "If anyone dies, while he never fought jihad and never had the desire for jihad then he dies in one of the parts of hypocrisy." (H.R. Muslim).<sup>29</sup>

Imam Al-Hafidz Ibn Hajar Al-Asqalany explained that this Hadith explains that every Muslim is obliged to jihad, at least have the intention to jihad even if it is not in war, because if it is not intended, he is considered to have a hypocritical nature. This Hadith also aims to

<sup>25</sup>Anak Agung Ngurah Hadipta, Sujono, and Bambang Widarto, "Penegakan Hukum Terhadap Tindak Pidana Desersi Dalam Waktu Damai Oleh Anggota Tentara Nasional Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 15, no. 1 (2024): 1–22, <https://doi.org/10.35968/jihd.v15i1.1376>.

<sup>26</sup>Rosidah, *Hukum Peradilan Militer*.

<sup>27</sup>Mahkamah Agung Republik Indonesia, "Putusan Mahkamah Agung Noor 3-K/PM.I-02/AD/I/2024 Tentang Desersi," 2024.

<sup>28</sup>Richwan Luthfi, Jubair, and Hamdan Hi.Rampadio, "KAJIAN TERHADAP DESERSI DALAM HUKUM PIDANA MILITER (Studi Pada DENPOM XIII/2 Palu)," *Jurnal Ilmu Hukum Legal Opinion* 12, no. 1 (2024): 33–46.

<sup>29</sup>Imam Al-Hafidz Ibnu Hajar Al-Asqalany., *Bulughul Maram. Terj. Lutfi Arif, Aditya Warman, Dan Fakhruddin* (Jakarta: Noura, 2018), h.747.



make the desire for jihad cross the heart of a Muslim even if it is only once in a lifetime.<sup>30</sup> Therefore, all Muslims are obliged to engage in jihad, be it with wealth, soul, or tongue, including jihad in war if someone declares war on Muslims. However, if there is a Muslim who wants to fight in war, but he has an excuse, then he is allowed not to join the war. As the hadith narrated by Abdullah ibn Umar, namely:<sup>31</sup>

وَعَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ جَاءَ رَجُلٌ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْذِنُهُ فِي الْجِهَادِ فَقَالَ أَحْيِي وَالِدَاكَ؟ قَالَ نَعَمْ قَالَ فَفِيهِمَا فَجَاهِدْ (مُتَّفَقٌ هَلَايَه)

وَلَا حَمْدَ وَأَبِي دَاوُدَ مِنْ حَدِيثِ أَبِي سَعِيدٍ نَحْوَهُ وَزَادَ إِزْجَعِ فَاسْتَأْذِنُهُمَا فَإِنْ أَذِنَا لَكَ وَإِلَّا فَبِرَّهُمَا

Abdullah bin Umar r.a. said, “A man came to the Messenger of Allah (peace be upon him) asking for permission to join Jihad (war). He asked, ‘Are your parents still alive?’ He replied, ‘Yes.’ He said, ‘Then fight for your parents (by being dutiful to them).’” Muttafaq ‘Alaih.

Ahmad and Abu Dawud also narrated a similar tradition from Abu Sa’id with the addition: “Go home and ask their permission. If they give you permission, engage in Jihad, and if not, be devoted to them.”

The above Hadith refers to a Muslim who has a valid excuse for not joining the war. A Muslim who still has parents should ask their permission first. This interpretation is supported by explanations from scholars of jurisprudence, including:

1. According to Ibn Hazm’s explanation, translated by Shaykh Ahmad Muhammad Syakir in *Al-Muhalla*, this hadith highlights that participating in war to defend the religion of Islam requires the consent of both parents. However, if the enemy has taken control of part of the Muslim territory, then jihad becomes part of an obligation imposed on every Muslim with physical abilities that can win the religion of Allah, even without parental permission. If there is no one available to care for one’s parents, the Muslim must not abandon them without ensuring their care. Therefore, he must prioritize his parents.<sup>32</sup>
2. Al Muthi’i considers filial piety toward one’s parents as more important than participating in military jihad. Accordingly, if someone leaves for war without their parents permission, they may return before combat begins. However, if the person has already engaged in battle, the ruling may differ.<sup>33</sup>

<sup>30</sup>Al-Asqalany, h. 747.

<sup>31</sup>Al-Asqalany, h. 749.

<sup>32</sup>Al-Imam Ibnu Hazm, *Al-Muhalla Jilid 8* (Jakarta: Pustaka Azzam, 2007), h. 4.

<sup>33</sup>Imam An-Nawawi, *Al-Majmu’ Syarah Al Muhadzdzab Jilid 28* (Jakarta: Pustaka Azzam, 1997), h. 141-

Regarding the sanctions between Islamic criminal law and positive law, differences also exist. According to positive law, based on article 87 of the Military Criminal Code (KUHPM), criminal sanctions for deserters can be divided into 2 parts, namely:<sup>34</sup>

1. Desertion in peacetime whose criminal sanction is a maximum imprisonment of 2 years 8 months.
2. Desertion in time of war which is punishable by a maximum imprisonment of 8 years and 6 months.

Referring to several cases decided in the Directory of Supreme Court Decisions regarding military desertion, in addition to imprisonment, judges also imposed additional punishments in the form of dismissal from military service. So that this makes the soldier change his status to an ordinary civilian. As the judge's decision in the desertion case of the convict with the initials DAS who was sentenced to imprisonment for 8 (eight) months and dismissed from military service.<sup>35</sup>

Meanwhile, in the perspective of Islamic criminal law, the punishment for deserters can be traced to history at the time of the Tabuk war. There were 3 companions of the Prophet who were known as true believers, including Ka'ab ibn Malik, Murarah ibn Rabi', and Hilal ibn Umayyah. They were tried by the Prophet for their actions in leaving the Tabuk war. The punishment given to them was in the form of social sanctions, namely the Prophet ordered all companions not to invite these three people to talk for 50 days until they repented. Even these three people were ordered to leave their wives.<sup>36</sup> During the period of social sanction imposed by the Prophet, the three individuals expressed remorse and repented for their actions. This can be seen from the words of Allah, namely:

وَعَلَى الثَّلَاثَةِ الَّذِينَ خُلِفُوا حَتَّىٰ إِذَا ضَاقَتْ عَلَيْهِمُ الْأَرْضُ بِمَا رَحُبَتْ وَضَاقَتْ عَلَيْهِمْ أَنْفُسُهُمْ وَظَنُّوا أَنَّهُمْ مَلَاجَا  
مِنَ اللَّهِ إِلَّا إِلَيْهِ ثُمَّ تَابَ عَلَيْهِمْ لِيَتُوبُوا ۚ إِنَّ اللَّهَ هُوَ التَّوَّابُ الرَّحِيمُ

“And as for the three who deferred their repentance until when the earth had become narrow for them, and the earth was wide, and their souls had become narrow for them, and they knew that there is no escape from Allah but to Him alone. Then Allah accepted their repentance that they might remain in repentance. Indeed, Allah is the Most Receptive of repentance, the Most Merciful.” (Q.S At-Taubah [9] : 118)

<sup>34</sup>Pemerintah Indonesia, *Kitab Undang-Undang Hukum Pidana Militer (KUHPM) No. 39 Tahun 1947*, h. 16.

<sup>35</sup>Pemerintahan Republik Indonesia, “Putusan Mahkamah Agung Noor 3-K/PM.I-02/AD/I/2024 Tentang Desersi.”

<sup>36</sup>Al-Mubarakfuri, *Ar-Rahiq Al-Makhtum. Terj. Faris Khairul Anam*, h. 504-505.

The sincerity of the repentance of Ka'ab ibn Malik, Murarah ibn Rabi', and Hilal ibn Umayyah is affirmed through various interpretations by classical commentators, including:

1. Tafsir Al-Misbah

When Ka'ab ibn Malik, Murarah ibn Rabi', and Hilal ibn Umayyah withdrew from the call to jihad, the Messenger of Allah and all the Muslims resolved not to speak to them. This situation caused deep sorrow to the extent that they felt as though the earth had become narrow for them, even though they knew that Allah's earth is vast. Filled with profound regret and anxiety, and with unwavering belief that there is no refuge from Allah's punishment except by returning to Him with sincere deeds, they repented. At that moment, Allah accepted their repentance.<sup>37</sup>

2. Tafsir Jalalain

Allah accepted their repentance, as evidence by the fact that the three companions felt the earth constricting them despite its vastness. Their unease stemmed from the delay in divine acceptance of their repentance, which caused their hearts to feel unsettled and sorrowful. Eventually, Allah granted them guidance and strength.<sup>38</sup>

The sanctions given to Ka'ab bin Malik and the other two men were a form of *ta'zir* punishment. This is because there is no explicit text regulating worldly sanctions for fleeing from the battlefield. *Ta'zir* punishment typically includes forms such as reprimand, detention, exile and corporal punishment.<sup>39</sup>

According to Hanafiyah scholars, certain Malikiyyah scholars, and some Syafi'iyah scholars, *ta'zir* punishment may also take the form of the death penalty if the crime is directly threatens state security or disrupts public order, and only if no other alternative can effectively prevent the offense. This is because the purpose of the application of *ta'zir* punishment is to provide prevention and deterrent effect to the perpetrator.<sup>40</sup>

Another case of desertion was that of Abdullah ibn Ubay, who along with his troops defected. According to the hadith narrated by Imam Bukhari, the Muslims disagreed in response to the desertion of Abdullah ibn Ubay and a third of his army. Some said to fight

---

<sup>37</sup>M. Quraish Shihab, *Tafsir Al-Misbah Jilid 5* (Tangerang: Penerbit Lentera Hati, 2005), h. 743.

<sup>38</sup>Imam Jalaluddin Al-Mahally, *Tafsir Jalalain Jilid 1* (Bandung: Sinar Baru Algesindo, 2018), h. 772.

<sup>39</sup>Al-Zuhayli, *Fiqh Islam Wa Adillatuhu*, h. 291.

<sup>40</sup>Al-Zuhayli, h. 293.

them, and some said to let them go.<sup>41</sup> Regarding the confusion experienced by the Muslims at that time, then the word of Allah was revealed, namely,

فَمَا لَكُمْ فِي الْمُنَافِقِينَ فَعْتَيْنِ وَاللَّهُ أَرْكَسَهُمْ بِمَا كَسَبُوا ۖ أَتُرِيدُونَ أَنْ تَهْدُوا مَنْ أَضَلَّ اللَّهُ ۚ وَمَنْ يُضِلِلِ اللَّهُ فَلَنْ تَجِدَ لَهُ سَبِيلًا

“So why do you (split) into two groups in (dealing with) the hypocrites, when Allah has turned them to disbelief, because of their own efforts? Do you intend to guide those whom Allah has misled? Whom Allah leads astray, you will not find a way (to guide) him.” (Q.S An-Nisa [4] : 88)

Based on Ibn Kathir’s interpretation, this verse explains that Allah rebuked the believers for the divisions that arose due to their differing opinions regarding the hypocrites. Some proposed killing them, while others considered them to be Muslims. This incident occurred when some of the troops were leaving the Battle of Uhud, which then caused debate among the Companions. The Prophet then said, “*Verily, Medina is pure. It will cleanse the bad as a blacksmith's fire blower cleans iron filings.*” Then, Allah revealed the surah an-Nisa verse 88 as a warning to them about division. Allah also emphasized that whoever He has led astray, then there will be no way for him to get guidance or get out of that astray.<sup>42</sup>

The defection of Abdullah ibn Ubay and a third of his troops is similar to that of a person who leaves his congregation in the hadith below,

عَنْ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّي رَسُولُ اللَّهِ إِلَّا يَأْخُذَ ثَلَاثُ الْثَبَابِ الرَّانِي وَالنَّفْسِ بِالنَّفْسِ وَالتَّارِكِ لِدِينِهِ الْمُفَارِقِ لِلْجَمَاعَةِ (مُتَّفَقٌ عَلَيْهِ)

From Ibn Mas’ud r.a. that the Messenger of Allah. said: “The blood of a Muslim who has testified that there is no God but Allah and that I am the messenger of Allah is not lawful except in one of three categories: the one who is or has been married and then commits adultery, the murderer of another person, and the one who abandons his religion, separates from the congregation (apostates from Islam and leaves the congregation of Muslims).” Muttafaq ‘Alaih.<sup>43</sup>

The above Hadith is a Hadīth about the causes of the blood of a Muslim. One of the categories is the one who abandons his religion and leaves the congregation. Although defection and apostasy are similar in terms of leaving the congregation, the intent and

<sup>41</sup>Al-Mubarakfuri, *Ar-Rahiq Al-Makhtum*. Terj. Faris Khairul Anam, h. 217.

<sup>42</sup>Ibnu Katsir, *Tafsir Ibnu Katsir Jilid 2, Tahqiq Oleh Abdullah Bin Muhammad Bin Abdurrahman Bin Ishaq Al-Shaleh* (Jakarta: Tafsir Qur’an, 2008), h. 370-371.

<sup>43</sup>Al-Asqalany., *Bulughul Maram*. Terj. Lutfi Arif, Aditya Warman, Dan Fakhruddin, h. 680.

purpose of the two actions are different. This can be seen from several views of fiqh scholars regarding apostates, including:

1. Imam An-Nawawi is of the opinion that the phrase “*separating from the congregation*” refers to the apostate. This is due to the fact that the religion that is truly agreed upon is Islam, so it is obligatory to keep it and not leave it.<sup>44</sup> While related to the actions of Abdullah bin Ubay is included in the hypocrisy, not part of apostasy.
2. According to Shaykh Taqiyyuddin As-Subki and Shaykh Abdul Aziz Abdullah bin Baz, the phrase “*separating oneself from the congregation*” can also refer to a group of people rebelling, calling for war on the Muslims, or separating themselves from the imam (leader).<sup>45</sup> This is similar to the actions of the Khawarij who opposed and rebelled against Ali ibn Abi Talib, legalized the blood of Ali ibn Abi Talib, and disbelieved in the companions of the Prophet.<sup>46</sup>
3. According to the Syarah of Ibn Daqiq al-‘Id, “*the one who leaves his religion, who separates himself from the congregation,*” applies to any individual who leaves Islam by whatever type of apostasy he commits. Therefore, if he does not return to Islam, he is subject to the death penalty.<sup>47</sup>

Thus, the meaning of the above hadith based on the views of some scholars, “*the one who leaves his religion, who separates from his congregation*” is a hadith that is intended for apostates. Abdullah ibn Ubay’s defection, on the other hand, falls under hypocrisy and hypocrites who show their hatred for Islam deserve to be killed.<sup>48</sup>

#### **D. REVIEW OF ISLAMIC CRIMINAL LAW ON THE CRIME OF MILITARY DESERTION**

In the perspective of Islamic criminal law, desertion can be interpreted as an act of fleeing from the battlefield. This act is included in one of the seven major sins. Where explicitly explained in the hadith narrated by Abu Hurairah about the seven major sins.<sup>49</sup>

---

<sup>44</sup>Muhyiddin Yahya bin Syaraf Nawawi, *Hadits Arba'in Nawawiyah* (Riyadh: Islamic Propagation Office in Rabwah, 2006), h. 45.

<sup>45</sup>Tbnu Hajar Al-Asqalani, *Fathul Baari Jilid 34* (Jakarta: Pustaka Azzam, 2012), h. 134-136.

<sup>46</sup>Al-Zuhayli, *Fiqh Islam Wa Adillatuhu*, h. 424.

<sup>47</sup>Sayyid bin Ibrahim Al-Huwaithi, *Kumpulan Hadis Arba'in an-Nawawi Jilid II* (Mesir: Markaz Fajr Lith-Thiba'ah, 2003), h. 58-59.

<sup>48</sup>Abu Abdullah Abdurrahman, *50 Tanda Orang Munafik* (Jakarta: CENDEKIA Sentra Muslim, 2006), h. 179.

<sup>49</sup>Syamsuddin Muhammad, *Dosa-Dosa Besar* (Solo: Pustaka Arafah, 2007), h. 115.

Thus, if a Muslim still chooses to do the act of running away from the battlefield, this indicates that their love for the world is greater than the hereafter, and makes them afraid of martyrdom.

Based on Islamic history, there was one of the Prophet's companions who had committed the act of running away from the battlefield. He was Ka'ab bin Malik, and he did this at the time of the Tabuk war. For his absence in the war without a justified excuse, he was subject to punishment in the form of social sanctions. The Prophet ordered all Muslims not to speak to Ka'ab bin Malik until he repented.<sup>50</sup> This sanction had a deep psychological impact on Ka'ab b. Malik. He felt regretful and sinful for not fighting with the Prophet at the Battle of Tabuk.

The sanction given by the Prophet aims to make Ka'ab bin Malik realize his negligent actions. Seeing Ka'ab bin Malik's honest attitude and not daring to lie to the Prophet, made the Apostle choose to punish Ka'ab bin Malik with *ta'zir* punishment in the form of social sanctions, rather than flogging or detention. The step that the Prophet took proved to be quite effective in causing a deterrent effect. This is because during the punishment, Ka'ab bin Malik continued to regret and repent.<sup>51</sup> Some of the imams are also of the opinion that *ta'zir* punishment is created to provide a deterrent effect as well as a preventive effect against crime.<sup>52</sup> So it can be understood that the imposition of punishment based on Islamic law is applied for the benefit of humans in terms of improving individuals and maintaining community order.<sup>53</sup>

The act of desertion is an act that is not in line with *maqashid sharia*, because this action threatens the benefit at the *dharuriyat* level. The *dharuriyat* refers to the preservation of essential human needs, which include the protection of religion, life, mind, lineage, and property from all threats.<sup>54</sup> This can be explained, namely:

1. In the aspect of *hifz al-din* (preservation of religion)

---

<sup>50</sup>Al-Mubarakfuri, *Ar-Rahiq Al-Makhtum. Terj. Faris Khairul Anam*, h. 504-505.

<sup>51</sup>Mustain, "Makna Khullifu Dalam Al-Qur'an Surah At-Taubah Ayat 117-119 Dan Relevansi Terhadap Rekonstruksi Boikot (Studi Kisah Rasulullah Shallallahu 'Alaihi Wassalam Dan Ka'ab Bin Malik)," *Khulasah Islamic Studies Journal* 06, no. 1 (2024): 110–25.

<sup>52</sup>Al-Zuhayli, *Fiqh Islam Wa Adillatuhu*, h. 291.

<sup>53</sup>Islamul Haq, "Prison in Review of Islamic Criminal Law: Between Human and Deterrent Effects," *Samarah* 4, no. 1 (2020): 132–50, <https://doi.org/10.22373/sjkh.v4i1.6683>.

<sup>54</sup>Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law," *Samarah* 7, no. 1 (2023): 399–417, <https://doi.org/10.22373/sjkh.v7i1.15101>.

A soldier who has taken a soldier's oath, but violates the oath, then he is included in hypocrisy. As the Prophet mentioned the characteristics of a hypocrite are three kinds, namely lying, betrayal and not keeping promises.<sup>55</sup> Oaths and promises are similar in terms of the obligation to fulfill what has been said. However, there is a fundamental difference between the two. Whereas a promise is related to human relationships, an oath is a promise that involves a commitment to Allah. Therefore, violation of an oath can result in consequences in the form of *kafarat* (fines).<sup>56</sup> Thus, a soldier who commits desertion is classified as an individual who does not maintain his religion because he is not trustworthy and violates his oath.

2. In the aspect of *hifz al-nafs* (preservation of the life)

A soldier who commits desertion will be subject to punishment in the form of imprisonment. In fact, there are many cases of desertion that have been tried in Indonesian military courts and have also been sentenced to additional criminal sanctions in the form of being dismissed from military service, or meaning that he is no longer a member of the military, as in decision number 15-K/PM.II-10/AU/III/2024 concerning the defendant of a desertion case who was sentenced to imprisonment for 1 (one) year and dismissed from military service.

One of the impacts of a soldier's dismissal from military service is not getting the thirteenth salary. Where in Government Regulation Number 11 of 2025 concerning the Provision of Holiday Allowances and Thirteenth Salaries to State Apparatus, Retirees, Pension Recipients, and Beneficiaries of 2025 in Article 8 states that civil servants, TNI Soldiers, and Members of the Indonesian National Police who are on leave and are assigned outside the government agency and get a salary from their assignment, then they do not get a thirteenth salary.

This is also supported by the case of Colonel Priyatno who was fired from the TNI. The spokesman for the Jakarta High Military Court II, Colonel Chk Hanifan, told reporters that the consequence of dismissal was the revocation of his official treatment rights. So that Colonel Priyatno no longer receives pensions or other

---

<sup>55</sup>Haidar Putra Daulay and Nurussakinah Daulay, *Pembentukan Akhlak Mulia: Tinjauan Pendidikan Agama Islam Dan Psikologi Positif* (Medan: Perdana Publishing, 2022), h. 182.

<sup>56</sup>Nihayatul Husna, “‘Janji Dan Sumpah: Kajian Tematik Tafsir Al-Munir A.S. An-Nahl:91 Karya Wahbah Zuhaili’, *Jurnal Kajian Al-Qur’an Dan Hadis*, Vol 2 No 2, 2022.” 2, no. 2 (2022): 12–22, <https://doi.org/10.33507/el-mujam.v2i2.1020>.

benefits.<sup>57</sup> Thus, this will make deserters who are dishonorably discharged in difficult economic conditions to take care of themselves or especially if they are the head of the family.

The preservation of the life (*hifz al-nafs*) is not limited only to the prohibition of killing, such as the act of killing with firearms. However, not fulfilling basic needs, such as food for individual survival, also constitutes a neglect of life preservation.

3. In the aspect of *hifz al-aql* (preservation of the mind)

Choosing to become a soldier or soldier is a tough decision, because it requires individuals to leave things that are valuable to them. However, once a person decides to pursue his profession as a soldier and reaches the point where he is sworn in, it signifies his readiness to accept all the consequences that exist, including being ready to sacrifice for the country. Therefore, if a soldier deserted due to the pressure of a life-threatening workload, it shows that the individual has lost the understanding of nationalism and patriotism. So if the understanding of self-sacrifice for the country is lost, then all aspects related to human protection will be threatened.

4. In the aspect of *hifz al-nasl* (preservation of lineage)

The behavior of soldiers who desert can threaten the maintenance of lineage. This is because if Indonesia is in a state of war emergency, namely a situation where the country is under attack or is in a war conflict, while many soldiers are absent from their military service obligations, it can cause weakness in Indonesia's defense system against the enemy.<sup>58</sup> If Indonesia loses and falls into the hands of an enemy that embraces liberalism or secularism, then this will threaten the aspect preservation of lineage.

The concept of liberalism is not in line with Islamic thought, where liberalism emphasizes freedom as an individual right without considering the benefits comprehensively in determining the truth.<sup>59</sup> So this easily makes the culture of promiscuity carried out by the community, such as one of them having free sex

---

<sup>57</sup>Nahda Rizki Utami, "Kolonel Priyatno Dipecat TNI, Hak Tunjangan-Jaminan Pensiunan Gugur," accessed June 6, 2025, <https://news.detik.com/berita/d-6114953/kolonel-priyanto-dipecat-tni-hak-tunjangan-jaminan-pensiun-gugur>.

<sup>58</sup>K. A. Putri and I Triadi, "Peran Militer Sebagai Pelindung Rakyat Indonesia Pada Saat Negara Dalam Keadaan Darurat Ditinjau Dari Perspektif Militer (Berdasarkan Kejadian Gerakan Aceh Merdeka)," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 10 (2023): 4666–473, <https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/1079%0Ahttps://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/download/1079/1140>.

<sup>59</sup>Ning Ratna Sinta Dewi, "Liberalisme Dalam Pemikiran Islam," *Abrahamic Religions: Jurnal Studi Agama-Agama* 2, no. 2 (2022): 186, <https://doi.org/10.22373/arj.v2i2.12827>.



which can cause pregnancy outside of marriage. These pregnancies threaten the preservation of lineage, particularly in establishing a clear genealogical link to the biological father.

5. In the aspect of *hifz al-mal* (preservation of property)

Military personnel, such as the Navy, have a very vital task in terms of protecting Indonesian waters, securing Indonesia's marine potential and biodiversity, and overcoming any challenges or threats related to marine security in Indonesian territory.<sup>60</sup> They are in charge of defense, law enforcement, and maintaining the security of the national marine territory in accordance with applicable regulations.<sup>61</sup> So, if these soldiers desert, then security related to Indonesia's marine resources will be very threatened and can cause foreign ships to enter Indonesia's territorial area easily due to a lack of supervision.

Based on several aspects that have been explained above, it is clear that the purpose of Islamic law is present or created in the world not only to protect individuals, but also to protect the interests of society and the state. Therefore, the area that is the purpose of protection from the perspective of Islamic law is broad, because it concerns aspects of human life, human relations, and relations with God.<sup>62</sup>

To prevent desertion from occurring on an ongoing basis, preventive policies made by authorized officials to military soldiers are needed. Some actions that can be taken include:

1. Providing an understanding of Pancasila values to soldiers as a strategic effort to instill patriotism and nationalism. This aims to protect the country from enemy attacks and strengthen national defense.<sup>63</sup> Pancasila values can be used as an alternative approach in preventing military desertion. Given the diverse religious backgrounds of Indonesian soldiers, implementing *maqashid sharia* in terms of

---

<sup>60</sup>Junior Hecta, Imam Munajat Nurhartonosuro, and Muhadi Muhadi, "Peran TNI AL Dalam Penegakan Hukum Di Wilayah Perairan Indonesia," *Jurnal Pendidikan Tambusai* 8, no. 2 (2024): 32084–91.

<sup>61</sup>Andriani Wahyuningtyas Novitasari, "Refleksi Kedaulatan Negara Dalam Penegakan Hukum Sumber Daya Alam Hayati Di Zona Ekonomi Eksklusif," *Jurnal Konstitusi* 17, no. 4 (2021): 919–38, <https://doi.org/10.31078/jk17410>.

<sup>62</sup>Fauzan, "Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 183–202, <https://doi.org/10.29240/jhi.v7i1.4308>.

<sup>63</sup>Ika Putra et al., "Upaya Mempertahankan Sikap Patriotisme Dan Nasionalisme Melalui Pendidikan Kewarganegaraan Untuk Generasi Milenial Dalam Revolusi 4.0," *Jurnal Ilmiah Wahana Pendidikan*, Januari 9, no. 1 (2023): 210–15, <https://doi.org/10.5281/zenodo.7519851>.

prevention will be a little difficult. Therefore, instilling the values of Pancasila as a preventive policy will be more easily accepted by the Indonesian army.

2. Revising the regulations concerning sanctions for military deserters should take into account the welfare of both soldiers and society. One of the steps that can be taken is to involve the community in the public forums and the ratification of changes to the military law. This is because the democratic system recognizes public participation in the formation of laws and regulations.<sup>64</sup> Therefore, including the community serves as a mechanism to prevent abuse of power, express collective aspirations, and strengthen public engagement in decision-making.<sup>65</sup>

Thus, based on the aforementioned explanations, notable distinctions exist between Islamic criminal law and positive law in addressing cases of desertion. Islamic criminal law emphasizes moral and spiritual dimensions, with sanctions aimed at encouraging perpetrators to repent and feel remorse for their actions. In contrast, the positive legal system tends to impose more repressive sanctions, which are not entirely effective in generating a deterrent effect, as reflected in the recurrence of desertion offenses.

## CONCLUSION

The act of desertion in Islamic criminal law refers to the act committed by an individual or a group of Muslims who flee from the battlefield. From the perspective of positive law, desertion is applicable only to military personnel, as it is classified as a strictly criminal offense. In contrast, Islamic criminal law applies desertion to any Muslim who is obligated to participate in jihad on the battlefield, unless a valid excuse exempts them from this duty. Additionally, Islamic criminal law permits military forces to retreat from the battlefield if it is believed that their tactical approach would lead to defeat. This was exemplified during the battle of Hunain.

Islamic criminal law regulates the punishment for deserters in the form of *ta'zir* sanctions, particularly on the form of social penalties. One such measure includes prohibiting the offender from speaking to fellow Muslims for 50 days. Furthermore, desertion is classified among the seven major sins, unless the individual repents. This punishment has a significant impact on believers, as *ta'zir* serves to create a deterrent effect on the perpetrator. In Islamic teachings,

---

<sup>64</sup>Muhamad Khoirul Wafa, "Peran Dan Partisipasi Masyarakat Dalam Pembentukan Undang-Undang," *Siyasah: Jurnal Hukum Tatanegara* 3, no. 1 (2023): 87–103, <https://doi.org/10.32332/siyasah.v3i1.6883>.

<sup>65</sup>Muhamad Irsyad Hanafi et al., "Penerapan Partisipasi Masyarakat Dalam Pembentukan Peraturan Implementation of Community Participation in the Formation of Legislation," *Contitution Journal*, 2024, 193–210.

Muslims are encouraged not to be excessively attached to worldly matters and to remain enthusiastic about jihad, especially for those who are capable of performing it. Therefore, if Islamic criminal law is used as a reference in determining criminal sanctions for desertion under positive law, and is instilled in the soul of military soldiers, namely the spirit of patriotism and nationalism, there is no doubt that the sanctions will have a preventive effect on military soldiers and a deterrent effect against desertion.

## REFERENCE

- Abdurrahman, Abu Abdullah. *50 Tanda Orang Munafik*. Jakarta: CENDEKIA Sentra Muslim, 2006.
- Al-Asqalani, Ibnu Hajar. *Fathul Baari Jilid 34*. Jakarta: Pustaka Azzam, 2012.
- Al-Asqalany., Imam Al-Hafidz ibnu Hajar. *Bulughul Maram. Terj. Lutfi Arif, Aditya Warman, Dan Fakhruddin*. Jakarta: Noura, 2018.
- Al-Bukhari. *Sahih Al-Bukhari. Terj. Muhammad Muhsin Khan*. Riyadh: DARUSSALAM, 1997.
- Al-Buthi, Muhammad Sa'id Ramadhan. *SIRAH NABAWIYAH: Analisis Ilmiah Manhajiah Sejarah Pergerakan Islam Di Masa Rasulullah Saw. Terj. Aunur Rafiq Shaleh Tahmid*. Jakarta: Robbani Press, 1999.
- Al-Huwaithi, Sayyid bin Ibrahim. *Kumpulan Hadis Arba'in an-Nawawi Jilid II*. Mesir: Markaz Fajr Lith-Thiba'ah, 2003.
- Al-Mahally, Imam Jalaluddin. *Tafsir Jalalain Jilid 1*. Bandung: Sinar Baru Algesindo, 2018.
- Al-Mubarakfuri, Shafiyurrahman. *Ar-Rahiq Al-Makhtum. Terj. Faris Khairul Anam*. Jakarta: Qisthi Press, 2014.
- . *Fase Perang Uhud. Terj. Umar Mujtahid*. Jakarta: Ummul Qura, 2022.
- Al-Qardhawi, Yusuf. *Fiqih Jihad: Sebuah Karya Monumental Terlengkap Tentang Jihad Menurut Al-Qur'an Dan Sunnah*. Bandung: Mizan Media Utama, 2009.
- Al-Zuhayli, Wahbah. *Fiqih Islam Wa Adillatuhu*. Damaskus: Dar al-Fikr, 2007.
- An-Nawawi, Imam. *Al-Majmu' Syarah Al Muhadzdzab Jilid 28*. Jakarta: Pustaka Azzam, 1997.
- Bimo, Edwin Shri. "Tentara Korea Utara Berseragam Rusia Menuju Ukraina, Kasus Desersi Militer Ukraina Melonjak." Accessed November 21, 2024. <https://www.kompas.tv/internasional/549936/tentara-korea-utara-berseragam-rusia-menuju-ukraina-kasus-desersi-militer-ukraina-melonjak>.
- Darlis, Andi Muhammad. *Terminologi Militer*. Jakarta: Balai Pustaka, 2021.

- Daulay, Haidar Putra, and Nurussakinah Daulay. *Pembentukan Akhlak Mulia: Tinjauan Pendidikan Agama Islam Dan Psikologi Positif*. Medan: Perdana Publishing, 2022.
- Djalaluddin, Muhammad Mawardi, Bulqia Mas'ud, Dedy Sumardi, Isnawardatul Bararah, and Kamus Kamus. "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law." *Samarah* 7, no. 1 (2023): 399–417. <https://doi.org/10.22373/sjhc.v7i1.15101>.
- Fauzan. "Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 183–202. <https://doi.org/10.29240/jhi.v7i1.4308>.
- Hadipta, Anak Agung Ngurah, Sujono, and Bambang Widarto. "Penegakan Hukum Terhadap Tindak Pidana Desersi Dalam Waktu Damai Oleh Anggota Tentara Nasional Indonesia." *Jurnal Ilmiah Hukum Dirgantara* 15, no. 1 (2024): 1–22. <https://doi.org/10.35968/jihd.v15i1.1376>.
- Hadras, Muhammad. *Peran Psikologi Dalam Bidang Militer Dan Menjaga Keutuhan Negara Keutuhan Republik Indonesia*. Jakarta: PT Gramedia, 2023.
- Hanafi, Muhamad Irsyad, Lutvi Dafina Damayanti, Indah Nazulfa, and Article Information. "Penerapan Partisipasi Masyarakat Dalam Pembentukan Peraturan Implementation of Community Participation in the Formation of Legislation." *Contitution Journal*, 2024, 193–210.
- Haq, Islamul. "Prison in Review of Islamic Criminal Law: Between Human and Deterrent Effects." *Samarah* 4, no. 1 (2020): 132–50. <https://doi.org/10.22373/sjhc.v4i1.6683>.
- Hassan, Takiruddin Haji. *Pemerintahan Kerajaan Bani Umayyah*. Malaysia: Perniagaan Jahabersa, 2012.
- Hazm, Al-Imam Ibnu. *Al-Muhalla Jilid 8*. Jakarta: Pustaka Azzam, 2007.
- Hecta, Junior, Imam Munajat Nurhartonosuro, and Muhadi Muhadi. "Peran TNI AL Dalam Penegakan Hukum Di Wilayah Perairan Indonesia." *Jurnal Pendidikan Tambusai* 8, no. 2 (2024): 32084–91.
- Husna, Nihayatul. "'Janji Dan Sumpah: Kajian Tematik Tafsir Al-Munir A.S. An-Nahl:91 Karya Wahbah Zuhaili.'" *Jurnal Kajian Al-Qur'an Dan Hadis* 2, no. 2 (2022): 12–22. <https://doi.org/doi.org/10.33507/el-mujam.v2i2.1020>.
- Indonesia, Mahkamah Agung Republik. "Putusan Mahkamah Agung Noor 3-K/PM.I-02/AD/I/2024 Tentang Desersi," 2024.
- Katsir, Ibnu. *Tafsir Ibnu Katsir Jilid 2, Tahqiq Oleh Abdullah Bin Muhammad Bin*

- Abdurrahman Bin Ishaq Al-Shaleh*. Jakarta: Tafsir Qur'an, 2008.
- Luthfi, Richwan, Jubair, and Hamdan Hi.Rampadio. "Kajian Terhadap Desersi Dalam Hukum Pidana Militer (Studi Pada DENPOM XIII/2 Palu)." *Jurnal Ilmu Hukum Legal Opinion* 12, no. 1 (2024): 33–46.
- Muhaimin. *Metode Penelitian Hukum*. Mataram: Mataram University Press, 2020.
- Muhammad Ilhamsyah. "Siege of Vienna: Awal Kemunduran Dominasi Turki Utsmani Di Eropa." Accessed April 29, 2025. <https://kumparan.com/muhammad-ilhamsyah-1710236477974406309/siege-of-vienna-awal-kemunduran-dominasi-turki-utsmani-di-eropa-22TfWbnyemi/full>.
- Muhammad, Syamsuddin. *Dosa-Dosa Besar*. Solo: Pustaka Arafah, 2007.
- Mujibburahman, S. A. E. "Catatan Atas Anggaran Belanja Kementerian Pertahanan." *Budget Issue Brief Politik Dan Keamanan* 1, no. 1 (2021): 1–2.
- Munajat. "Religion and Nationalism in Shaping the Fiqh of Armed Jihad: A Lesson to the Indonesian National Counterterrorism Policy." *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022): 311–34. <https://doi.org/10.15408/ajis.v22i2.26130>.
- Mustain. "Makna Khullifu Dalam Al-Qur'an Surah At-Taubah Ayat 117-119 Dan Relevansi Terhadap Rekonstruksi Boikot (Studi Kisah Rasulullah Shallallahu 'Alaihi Wassalam Dan Ka'ab Bin Malik)." *Khulasah Islamic Studies Journal* 06, no. 1 (2024): 110–25.
- Mys. "Kasus Desersi Dan Susila Banyak Menjerat Prajurit." Accessed November 14, 2024. <https://www.hukumonline.com/berita/a/kasus-desersi-dan-susila-banyak-menjerat-prajurit-lt4fa20bdf8e6d6/>.
- Nawawi, Muhyiddin Yahya bin Syaraf. *Hadits Arba'in Nawawiyah*. Riyadh: Islamic Propagation Office in Rabwah, 2006.
- Novitasari, Andriani Wahyuningtyas. "Refleksi Kedaulatan Negara Dalam Penegakan Hukum Sumber Daya Alam Hayati Di Zona Ekonomi Eksklusif." *Jurnal Konstitusi* 17, no. 4 (2021): 919–38. <https://doi.org/10.31078/jk17410>.
- Palmer, Alan Warwick. *The Decline and Fall of The Ottoman Empire*. New York: Barnes & Noble Books, 1994.
- Pemerintah Indonesia. *Kitab Undang-Undang Hukum Pidana Militer (KUHPM) No. 39 Tahun 1947*. Jakarta: Pemerintahan Republik Indonesia, 2014.
- Putra, Ika, Mario Rachman Heryawan, Aulia Rukmana, Muhammad Rifqi, and Supriyono. "Upaya Mempertahankan Sikap Patriotisme Dan Nasionalisme Melalui Pendidikan Kewarganegaraan Untuk Generasi Milenial Dalam Revolusi 4.0." *Jurnal Ilmiah Wahana*

- Pendidikan*, Januari 9, no. 1 (2023): 210–15. <https://doi.org/10.5281/zenodo.7519851>.
- Putri, KA, and I Triadi. “Peran Militer Sebagai Pelindung Rakyat Indonesia Pada Saat Negara Dalam Keadaan Darurat Ditinjau Dari Perspektif Militer (Berdasarkan Kejadian Gerakan Aceh Merdeka).” *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 10 (2023): 4666–473. <https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/1079%0Ahttps://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/download/1079/1140>.
- Rosidah, Nikmah. *Hukum Peradilan Militer*. Bandar Lampung: AURA, 2019.
- Sarwat, Ahmad. *Seri Fiqih Kehidupan (17): Jihad*. Jakarta: DU Publishing, 2016.
- Setyarini, Astri Dewi, and Irwan Triadi. “Pelanggaran Desersi Pada Prajurit Militer.” *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 5 (2023): 55–62.
- Shihab, M. Quraish. *Tafsir Al-Misbah Jilid 5*. Tangerang: Penerbit Lentera Hati, 2005.
- Sinta Dewi, Ning Ratna. “Liberalisme Dalam Pemikiran Islam.” *Abrahamic Religions: Jurnal Studi Agama-Agama* 2, no. 2 (2022): 186. <https://doi.org/10.22373/arj.v2i2.12827>.
- Syarifuddin. *Militer Dalam Perspektif Al-Qur'an: Relevansi Komsep Militer Rasulullah Dan Implementasi Dalam Kepemimpinan TNI*. Jakarta: PTIQ Press, 2018.
- Utami, Nahda Rizki. “Kolonel Priyatno Dipecat TNI, Hak Tunjangan-Jaminan Pensiunan Gugur.” Accessed June 6, 2025. <https://news.detik.com/berita/d-6114953/kolonel-priyanto-dipecat-tni-hak-tunjangan-jaminan-pensiun-gugur>.
- Wafa, Muhamad Khoirul. “Peran Dan Partisipasi Masyarakat Dalam Pembentukan Undang-Undang.” *Siyasah: Jurnal Hukum Tatanegara* 3, no. 1 (2023): 87–103. <https://doi.org/10.32332/siyasah.v3i1.6883>.