

## Indonesia's Military Court Law Reform: A Conflict of Norms over the Court Jurisdiction to Try Military Members Committing Crime

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### Abstract

The issue of which court has the authority to prosecute military personnel who commit general crimes remains a problem in the Indonesian criminal justice system. This problem arises from differences in regulations between the Military Courts Law and the Criminal Procedure Code regarding the judicial forum authorized to prosecute military personnel. This article aims to identify the normative conflicts arising from this phenomenon and to formulate arguments regarding the urgency of reforming the Military Courts Law. This article employs a normative legal research method using statutory and conceptual approach. The results indicate that there is a normative conflict between the Military Courts Law, which requires that military personnel who commit general crimes be tried in Military Courts, and the 2025 Criminal Procedure Code, which requires cases to be resolved based on the principle of connectivity through General Courts. Normatively, trials of military personnel who commit general crimes should be conducted in General Courts to ensure equality before the law and avoid the perception of preferential treatment due to the tendency for lighter sentences to be handed down in Military Courts. Furthermore, the demand for reform aligns with the evolving paradigm of Indonesian criminal law, which prioritizes restorative justice, namely, punishment that focuses not only on punishing the perpetrator but also on restoring the victims' losses and interests. Therefore, reforming the Military Courts Law is an urgent need to achieve legal certainty, justice, and harmonization of the national criminal justice system.

**Keywords:** *Conflict of Norm; General Crime; Military Court; Restorative Justice*

### Introduction

Indonesia, as a *rechtsstaat*, places the supremacy of law as the basis for organizing the nation itself. This principle is affirmed in Article 1 paragraph (3) of the 1945 Constitution, which states that Indonesia is a country based on law (*rechstaat*). As a law-based country, all actions of state administrators, including defense and security forces, must comply with written regulations along with applicable judicial mechanisms. The Indonesian National Armed Forces (*Tentara Nasional Indonesia* (TNI)), as the main component of the defense and security of the Republic of Indonesia, is no exception. It is part of society and thus becomes a subject of law. Within the Indonesian legal framework, the TNI is

subject to military criminal law and general criminal law. Therefore, soldiers are obliged to submit, obey, respect, and uphold legal values (Sungkono et al., 2024).

In case of a legal dispute, the parties can file a case which is carried out through several judicial environments, including: 1) general courts; 2) religious courts; 3) state administrative courts; and 4) military courts. This concept is emphasized in Article 24, paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Pakaya & Nalali, 2020). Military justice is a judicial subsystem that has special characteristics because it is intended to enforce law and discipline within the Indonesian National Armed Forces (TNI), considering that the military community is considered a special community that must maintain excellent discipline and morale so that they are always ready to be deployed for any assignment. The existence of a Military Court is based on the need for a legal system that is able to maintain order and effectiveness of a military organization that has a strict command structure and discipline (Siswayani et al., 2024).

The regulation pertaining to the authority of military courts in Indonesia is regulated in Law Number 31 of 1997 concerning Military Courts. Article 9, paragraph (1) of the law states that:

*"Military Court has the authority to try criminal acts committed by a person who was a soldier at the time of committing the crime."*

This provision shows that the jurisdiction of the Military Court is based on a subject-based jurisdiction approach, namely the perpetrator's status as a soldier, without differentiating the type of crime committed.

However, the enactment of Law Number 34 of 2004 concerning the Indonesian National Armed Forces brought fundamental changes to the regulations regarding the legal status and responsibilities of soldiers in the dynamics of legal politics in Indonesia. The enactment of this Law was supposed to fulfill the demands of the 1998 reforms, to make military members submit to principles such as the supremacy of law, democracy, and respect for human rights (Sabrian & Harahap, 2026). One of the important agendas in security sector reform is the repositioning of the Armed Forces' role to be more professional and no longer involved in the civilian sphere, including in terms of legal accountability. Article 65 paragraph (2) of Law Number 34 of 2004 emphasizes that:

*"Soldiers are subject to the authority of Military Courts in cases of violations of military law and are subject to the authority of General Courts in cases of violations of general criminal law."*

This provision explicitly introduces a new approach to determining courts' jurisdiction, namely an approach based on the type of crime, also known as offense-based jurisdiction. In other words, the authority of military courts is limited only to military offenses, while general criminal offenses committed by soldiers must normatively be tried in general courts. This provision is also supported by Law Number 20 of 2025 concerning the Criminal Procedure Code, specifically Article 170 paragraph (1), stating:

*"Criminal acts committed jointly by those within the jurisdiction of general courts and military courts are examined and tried by a court within the general courts."*

However, based on the current law enforcement practices in Indonesia, most soldiers who commit general crimes are tried through military courts. This situation occurs because the provisions of Law Number 31 of 1997 concerning Military Court still grant military courts absolute authority to try active soldiers based on the principle of personality, which means that military law remains applicable, regardless of where the military (subject) goes (Amalia & Triadi, 2025). This phenomenon gives rise to a normative conflict among the Indonesian National Armed Forces Law and the Criminal Procedure Code, with the Military Justice Law. This conflict creates legal uncertainty regarding which judicial institution has the authority to try soldiers who commit general crimes. On one hand, the Military Justice Law still maintains absolute jurisdiction based on the status of the perpetrator (subject-based jurisdiction).

Meanwhile, the Indonesian National Armed Forces Law, in line with the Criminal Procedure Code, requires limiting jurisdiction based on the type of crime (offense-based jurisdiction) (Berutu & Esther, 2025). This conflict is problematic because the three laws are in the same hierarchy, so it cannot be resolved by using the principle of *lex superior derogat legi inferiori*, where higher regulations prevail over lower regulations.

Based on the background of problems outlined above, this article aims to identify the disharmony in the authority between military courts and general courts in adjudicating crimes committed by the Indonesian National Armed Forces (TNI). This article aims to argue the urgency of reforming the Military Court Law, providing clarity on the absolute authority of both general courts and military courts in handling crimes committed by soldiers. Furthermore, this article is also crucial for research aimed at analyzing these conflicting norms to achieve legal certainty in the Indonesian legal system.

### **Research Method**

This article employs a normative legal research method with a statutory and conceptual approach. The normative method is chosen since the issue being studied relates to the conflict of norms in regulating the competence of military courts and general courts in adjudicating crimes committed by the Indonesian National Armed Forces. Therefore, a descriptive-qualitative analysis is required to address the legal phenomenon related to the judicial authority in prosecuting criminal offenses in Indonesia. A statutory approach is used as a method to analyze legal issues based on applicable domestic regulations, ensuring that the phenomena being studied have a clear legal basis. Then, a conceptual approach is used to examine legal concepts relevant to the research problem (Fuady, 2018). This research utilizes primary and secondary legal materials collected through library research to gather legal materials and literature relevant to the research problem.

### **Results and Discussion**

#### **1. The Authority of Military Courts in Trying Members of the Indonesian National Armed Forces Committing Criminal Acts**

The authority of the Military Court to try members of the Indonesian National Armed Forces has a legal basis in the Indonesian judicial system, specifically in Article 9 paragraph (1) letter (a) of Law Number 31 of 1997 concerning Military Courts, which stipulates that soldiers who commit crimes are, in principle, subject to the jurisdiction of the Military Courts. The article states:

*"Military Court has the authority to try criminal acts committed by a person who was a soldier at the time of committing the crime."*

This provision is based on the personal status of the perpetrator as a member of the military who holds a special position, duties, and responsibilities in national defense. Therefore, the investigation, prosecution, and adjudication of criminal cases committed by soldiers are carried out through a judicial mechanism specifically established for the military environment. This arrangement is intended to maintain discipline, hierarchy, and the effectiveness of the execution of military duties. Thus, the Military Court has the legal legitimacy to try soldiers who commit crimes in accordance with applicable laws and regulations (Hardiyanto et al., 2025).

The authority of the Military Court to try criminal acts committed by soldiers based on the type of crime refers to Law Number 39 of 1947 concerning the Military Criminal Code. The Military Criminal

Code contains various acts categorized as violations of military criminal law and subject to certain criminal sanctions. In general, Military Crimes are divided into two main groups, namely Pure Military Crimes (*Zuiver Militaire Delicten*) and Mixed Military Crimes (*Gemengde Militaire Delicten*). Pure Military Crimes are acts that can only be committed by a military member because they are directly related to their military status and obligations. Meanwhile, Mixed Military Crimes are general crimes that acquire military characteristics because the acts are committed by military members or under certain circumstances related to military interests. This division indicates differences in the nature and scope of crimes that are the object of regulation in military criminal law (Pradipta, 2024).

Pure Military Crimes are crimes specifically arising from a person with a status of soldier, along with their official duties and obligations. One form of pure military crime is desertion, which is the act of a soldier leaving duty without permission within a certain period of time as determined by statutory regulations. There is also the crime of absence without permission, which is related to the soldier's absence from carrying out his official duties without the approval of an authorized superior. Another form is insubordination, which is the act of resisting or disobeying the orders of a legitimate superior within the military environment. The Military Criminal Code also regulates various violations that can disrupt the implementation of military duties and discipline (Putra & Mulyana, 2025). All of these crimes are categorized as pure military crimes because their existence cannot be separated from the perpetrator's status as a member of the military.

Unlike purely military crimes, mixed military crimes are essentially general crimes also recognized in the concept of national criminal law. Examples include assault, murder, theft, or other crimes that can be committed by anyone, including members of the Indonesian National Armed Forces. However, when these acts are committed by soldiers, they can be handled within the scope of military criminal law in accordance with applicable provisions (Prasetyoandi et al., 2024). This category is included within the principle of connectivity (*koneksitas*), which involves perpetrators from both military and civilian elements in the same criminal incident.

Based on this description, it can be understood that the Military Court has the authority to try members of the Indonesian National Armed Forces who commit crimes on a subject-based jurisdiction approach. This authority is based on the perpetrator's personal status as a soldier who is subject to the military legal and disciplinary system. For both Pure Military Crimes and Mixed Military Crimes, the judicial process is principally carried out through the Military Court environment in accordance with statutory provisions. This regulation is a consequence of the need to maintain order, discipline, and the effectiveness of the military organization in carrying out its national defense function. Therefore, the existence of the Military Court functions not only as a means of law enforcement, but also as an instrument for fostering soldier discipline, so that soldiers who commit crimes are tried in the Military Court as regulated in the Military Court Law.

## 2. Comparative Analysis of the Authority between Military Courts and General Courts

The provision relating to the judicial forum to try the Indonesian National Armed Forces is primarily regulated in Law Number 34 of 2004 concerning the Indonesian National Armed Forces. Article 65, paragraph (2) of the Law states:

*"Soldiers are subject to the authority of military court in cases of violations of military criminal law and are subject to the authority of general court in cases of violations of general criminal law as regulated by law."*

Furthermore, Article 65 paragraph (3) states that:

*"If the general court, as referred to in paragraph (2), does not function well, then soldiers are subject to the judicial power regulated by law."*

The provision of Article 65, particularly paragraph 2, indicates a direction for legal reform that differentiates between military crimes and general crimes committed by soldiers. Therefore, the Indonesian National Armed Forces Law normatively requires that violations related to general criminal law no longer fall within the exclusive jurisdiction of the Military Court. This regulation also reflects an effort to realize the principle of equality before the law by eliminating subject-based jurisdiction.

However, the provision of Article 65 of the Indonesian National Armed Forces Law cannot be separated from the other provisions written in Article 74. Article 74 paragraphs (1) and (2) respectively state:

*"The provisions referred to in Article 65 shall apply when the new law on the Military Court is enacted."*

*"As long as a new law on Military Court has not been established, it remains subject to the provisions of Law Number 31 of 1997 concerning Military Courts."*

Thus, based on Article 74 paragraph (2), as long as a new law on Military Courts has not been enacted, soldiers remain subject to the provisions of Law Number 31 of 1997 concerning Military Courts. At the time of writing, the new Military Court Law has not been ratified yet. Therefore, the provisions of the 1997 Military Court Law remain in effect and form the basis of jurisdiction over soldiers. Consequently, soldiers who commit general crimes can, in practice, still be tried within the Military Court based on the approach adopted by the Military Court Law (Taufikurrahman et al., 2025).

Although soldiers are generally tried within the Military Court, there are certain circumstances that allow a soldier to be examined and tried within the General Court. One mechanism that makes this possible is through the principle of connectivity (*koneksitas*). The principle of connectivity is a judicial system used when a crime is committed jointly by perpetrators from different judicial scopes, namely, civilian and military. The primary goal of the connectivity principle is to create an efficient judicial process, avoid protracted investigations, and ensure a uniform legal assessment of a case. Without this principle, the same criminal act could be examined separately by two different judicial systems. This situation has the potential to lead to inconsistent decisions and reduce legal certainty (Prastopo et al., 2026).

The legal basis regarding the connectivity principle is regulated in Article 170 paragraph (1) of Law Number 20 of 2025 concerning the Criminal Procedure Code, stating:

*"Criminal acts committed jointly by those within the scope of general courts and military courts shall be examined and tried within the general courts."*

However, the Criminal Procedure Code does not absolutely stipulate that all connectivity cases must be examined by the General Court. Article 170, paragraph (2) of the Criminal Procedure Code provides an exception by stating:

*"In the case of a criminal act as referred to in paragraph (1) where the loss lies heavier in military interests, the case must be examined and tried within the Military Court."*

This provision demonstrates that the Criminal Procedure Code uses an approach oriented toward the object or nature of the crime and the legal interests that are affected the most. In other words, determining jurisdiction is not solely based on the status of the perpetrator, but rather on the interests affected by the crime (offense-based jurisdiction). If the harm caused by the crime lean heavier on public interests, the case may be heard by a General Court. Conversely, if the harm caused by the crime lean heavier on military interests, jurisdiction may lie with a Military Court (Angreni & Hariyanto, 2025).

The debate over which judicial forum has the authority to try members of the Indonesian National Armed Forces can be seen in the case of Andrie Yunus, an Indonesian activist. The case stemmed from an alleged acid attack on Andrie Yunus, which resulted in serious injuries. In this case, the alleged perpetrators were active soldiers, so the law enforcement process was conducted through the Military Court. On the other hand, the case was viewed as a general crime that directly impacted civilians. This situation then gave rise to debate over the most appropriate judicial forum to try the perpetrators. The Andrie Yunus case ultimately became a current example demonstrating the complex relationship between the jurisdiction of Military Courts and General Courts (Kumparannews, 2026).

As the case progressed, the suspects in the Andrie Yunus case were initially processed and tried at the Jakarta Military Court II-08. This forum was chosen based on the suspects' status as active members of the Indonesian National Armed Forces, thus deemed subject to the jurisdiction of the Military Court under Law Number 31 of 1997 concerning Military Courts. However, a pretrial ruling was subsequently issued, ordering the case to be processed through the General Court. This ruling sparked debate regarding the judicial forum authorized to examine and adjudicate the case. Some argue that the perpetrators' status as soldiers is the primary basis for the Military Court's authority. Meanwhile, others argue that the nature of the crime, which is a general crime, is more appropriately placed within the jurisdiction of the General Court.

Based on this description, it is understandable that the regulation regarding the authority to prosecute soldiers who commit crimes still leaves normative issues. On the one hand, the Military Court Law and the transitional provisions in the Indonesian National Armed Forces Law still place soldiers within the jurisdiction of the Military Court based on the status of the perpetrator (subject-based jurisdiction). On the other hand, the Criminal Procedure Code, particularly in its provisions regarding connectivity, places more emphasis on the nature of the crime and the legal interests harmed (offense-based jurisdiction). These differing approaches give rise to normative conflicts that can lead to uncertainty in determining the competent judicial forum. The Andrie Yunus case is a clear illustration of the differing interpretations of the authority to prosecute soldiers in a general criminal case.

### **3. Conceptual Analysis of the Authority to Prosecute Military Members from a Indonesia's Criminal Law Perspective**

In the development of the Indonesian judicial system, the prevailing paradigm in current criminal law is the principle of restorative justice. This approach positions the resolution of criminal cases not solely on punishing the perpetrator. Instead, the primary focus is directed toward efforts to restore the losses and damage caused by the crime. Furthermore, perpetrators are given the opportunity to improve themselves through more humane and reintegrative-oriented development. Thus, the judicial process serves not only as a means of punishment but also as an instrument for restoring relationships between perpetrators, victims, and the community. This paradigm reflects a shift from a repressive approach to a more just and restorative approach (Amarini et al., 2024).

Aside from the principle of restorative justice, in the context of crimes committed jointly by military personnel and civilians, the principle of connectivity allows a case to be examined in a single judicial mechanism even if it involves legal subjects in two different judicial environments. Regulations

regarding the principle of connectivity can be found in Article 16 of Law Number 48 of 2009 concerning Judicial Power, stating:

*"Criminal acts committed jointly by those within the scope of general courts and military courts shall be examined and tried by a court within the jurisdiction of general courts, except in certain circumstances where, according to the decision of the Chief Justice of the Supreme Court, the case must be examined and tried by a court within the military courts."*

This principle aims to create efficiency in the law enforcement process and avoid conflicting decisions. Furthermore, integrated case investigations are expected to provide a more comprehensive picture of the criminal acts. Therefore, the principle of connectivity is a crucial normative instrument for ensuring the effectiveness and unity of case handling.

Despite being stipulated in legislation, the application of the principle of connectivity in practice still shows various inconsistencies. In many criminal cases involving military and civilian perpetrators, each defendant is usually tried in different judicial settings. This situation causes cases originating from a single criminal incident to be split into two separate judicial processes. As a result, the initial goal of the principle of connectivity, which is to create an integrated examination, is often not optimally achieved (Rihi et al., 2025). In fact, some groups have proposed that the principle of connectivity be abolished because it is considered no longer relevant to current law enforcement needs (Gunawan, 2021). This view is also driven by concerns that the existing mechanism has the potential to provide certain advantages to perpetrators from the military.

One reason for the criticism of the principle of connectivity is the perception that military personnel gain an advantage when tried in Military Courts. This assumption stems from the perception that verdicts handed down by Military Courts tend to be lighter than those handed down by General Courts in similar cases (Gunawan, 2021). Furthermore, the institutional characteristics of Military Courts, which are within the military environment, often raise questions about the independence and objectivity of the judicial process. This situation raises concerns about the difference in judicial treatment based on their personal status. Although not all cases show the same pattern, this perception continues to develop in legal and human rights discourse. Based on past cases, the existence of Military Courts in general criminal cases has often been the object of criticism from various groups.

The tendency for lighter sentences in Military Courts also has the potential to raise issues of justice from the victims' perspective (Paja et al., 2025). Victims and their families may feel that the sentences imposed are disproportionate to the losses or suffering they have experienced. Furthermore, the difference in sentencing between civilian and military perpetrators in similar cases can create the impression of inequality before the law. The principle of equality before the law demands that everyone receive equal treatment regardless of social status or profession. Inequality in sentencing has the potential to undermine public trust in the justice system.

In line with demands for criminal law reform oriented toward restorative justice, the Military Courts Law needs immediate reform to align with the modern criminal law paradigm. This reform is crucial given that developments in national criminal procedure law indicate a tendency for military personnel who commit general crimes to be tried in general courts. In addition to achieving a uniform judicial system, the reform is also necessary to avoid conflicts between various applicable regulations. It should be noted that the current Military Courts Law was passed in 1997, thus still reflecting the legal framework of the authoritarian New Order era. Regulatory adjustments are urgently needed to ensure that the Indonesian criminal justice system is more in line with the principles of democracy and the rule of law.

The reform of the Military Justice Law is also part of the commitments the Indonesian government has expressed in international forums. In the 2007 and 2012 United Nations Universal Periodic Reviews, the Indonesian government expressed its commitment to reforming the military court system (Gunawan, 2021). This commitment relates to efforts to strengthen accountability and ensure fairer law enforcement for all citizens. This reform is also in line with the growing application of restorative justice principles within the national legal system. With these regulatory reforms, the judicial process for military personnel who commit crimes can better reflect the principles of equality and justice. Therefore, reform measures need to be implemented immediately so that Indonesia can fulfill its commitments to the international community.

### Conclusion

This article concludes that the disharmony in provisions regarding the authority to prosecute military personnel who commit crimes has given rise to a conflict of norms in the Indonesian legal system due to the conflict between the provisions of the Military Courts Law and the 2025 Criminal Procedure Code. This conflict has implications for legal uncertainty in determining the judicial forum authorized to examine and prosecute military personnel who commit general crimes. The development of the national criminal law paradigm, which increasingly prioritizes the principle of restorative justice, indicates the need for regulatory adjustments to align with the direction of reform in Indonesian criminal law. The urgency of reform is even stronger given that Military Courts are often seen as providing benefits to soldiers through a tendency to impose lighter sentences than General Courts. This situation has the potential to create unequal legal treatment and reduce the sense of justice for victims and the community. Demands for reform have also grown stronger following the emergence of the Andrie Yunus case, which has led to public pressure for cases involving military personnel in general crimes to be examined in General Courts. Therefore, it is necessary to immediately reform the Military Court Law, not only to ensure legal certainty and harmony in the judicial system, but also to fulfill the reform commitments that the Indonesian government has conveyed in the United Nations forums in 2007 and 2012.

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