



Renewal of the Criminal Responsibility System for Indonesian National Army Soldiers Regarding the Misuse of Military Facilities and Equipment

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Abstract

The study aims at the legal framework concerning the criminal responsibility of soldiers in the Indonesian National Army (TNI) when they misuse military facilities and equipment. It deals with a significant gap in Indonesia's military criminal law since, although TNI soldiers are governed by both general criminal law and military criminal law, the way in which criminal responsibility is to be constructed in cases of misuse of military assets is unclear. By applying a normative legal research method that includes statutory, case law, conceptual, and comparative approaches, the study examines the regulatory framework both before and after the passage of Law No. 3 of 2025, looks at the ratio decidendi of Military Court Decision No. 50-K/PM.I-04/AD/V/2025, and suggests an ideal concept for reforming the system of criminal responsibility. The results show that the existing legal framework has normative gaps and contradictions, especially in respect of the ambiguity about jurisdiction between military and general courts and the absence of specific provisions on the misuse of military facilities and equipment. The study recommends a dualistic approach to criminal responsibility which clearly separates criminal acts from culpability, while taking into account the particular features of the military environment. This research helps in the development of military criminal law in Indonesia and offers normative advice for legislative reform.

Keywords: Criminal Responsibility; TNI Soldiers; Military Facilities Misuse; Legal Renewal; Military Criminal Law

1. Introduction

The Indonesian National Army (*Tentara Nasional Indonesia*, TNI) occupies a distinctive position within the Indonesian constitutional framework. As the state's instrument for national defense, the TNI is constitutionally mandated under Article 30 of the 1945 Constitution to protect national sovereignty, territorial integrity, and the safety of the nation. The TNI's duties and functions are further elaborated in Law No. 34 of 2004 on the Indonesian National Army, which was recently amended by Law No. 3 of 2025. This legal framework establishes the TNI as a state institution with specialized characteristics, including hierarchical command structures, military discipline, and specific operational obligations (Hadi, Triadi, & Sagala, 2025).

As legal subjects, TNI soldiers are bound by two overlapping legal regimes: general criminal law and military criminal law. This dual subjection creates a unique legal position where soldiers must comply not only with the general penal code but also with the Military Penal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM) and military discipline regulations (Pebrianto, 2024). The principle of legality (*nullum delictum nulla poena sine praevia lege poenali*) and the principle of culpability (*geen straf zonder schuld*) serve as fundamental safeguards to ensure that criminal responsibility is imposed only when both the act and the actor's culpability are legally established (Hiariej, 2024; Moeljatno, 2015).

The Indonesian National Army (*Tentara Nasional Indonesia*, TNI) holds a special place in the country's constitutional system. By virtue of Article 30 of the 1945 Constitution, the TNI is required to safeguard national sovereignty, territorial integrity and the safety of the nation as the army of the state. The duties and functions of the TNI are also set out in Law No. 34 of 2004 on the Indonesian National Army, a law which was most recently revised by Law No. 3 of 2025. This legal structure recognises the TNI as an institution of the state with particular

features, such as a hierarchical system of command, military discipline and specific operational responsibilities (Hadi, Triadi, & Sagala, 2025).

As subjects under the law, members of the TNI are subject to two overlapping legal systems: general criminal law and military criminal law. This dual status results in a special legal position in which soldiers are required to adhere not only to the general penal code but also to the Military Penal Code (Kitab Undang-Undang Hukum Pidana Militer, KUHPM) and the regulations relating to military discipline (Pebrianto, 2024). The principles of legality (*nullum delictum nulla poena sine praevia lege poenali*) and culpability (*geen straf zonder schuld*) act as basic protections to make sure that criminal liability is only imposed where both the act and the guilt of the individual have been legally established (Hiariej, 2024; Moeljatno, 2015).

Yet, when it comes to putting into practice criminal liability for TNI soldiers who misuse military facilities and equipment, numerous difficulties are encountered. Since military facilities and equipment are state assets directly related to national defence interests, any misuse—whether it involves using them personally without authorization, transferring them to unauthorized persons, or using them in a manner contrary to their intended purpose—not only breaches internal military discipline but might also amount to a criminal offence (Bawana, Cahyono, & S., 2024). The sociological situation shows that such misuse still takes place, as proven by the cases that have been reported by monitoring bodies. For example, in September 2025 a soldier fired a gun inside a bank in Gowa, South Sulawesi, which led to demands for a review of the systems relating to firearm supervision and accountability. In another instance, a civilian used a military vehicle without authorization and this caused a fatal accident.

The gap in this case is two-fold. In the first place, the regulatory framework is scattered between Law No. 31 of 1997 on Military Justice and Law No. 34 of 2004 (as amended by Law No. 3 of 2025). According to Article 65(2) of the TNI Law, soldiers who commit general crimes must be tried by the general courts, but Article 74 postpones the application of this provision until a new Military Justice Law is passed (Pebrianto, 2024). As a result, Law No. 31 of 1997 is still in effect, leading to uncertainty about jurisdiction (Muhammad & Hoetomo, 2025). Secondly, the particular offence of misusing military facilities and equipment has no clearly defined normative rules concerning the elements of criminal responsibility, especially when it comes to telling the difference between disciplinary breaches and criminal offences (Saragih, 2024).

The originality of this study is due to the way it takes an integrated approach. While previous studies have looked at reforms to military criminal law in a general manner, for example Andianto's (2022) work on the reformulation of the rules regarding deserters or Rabiatul 'Adawiah's (2025) analysis of sentencing renewal in the KUHPM, the present research concentrates specifically on the misuse of military facilities and equipment as its particular area of focus. It deals with three analytical aspects at the same time: (1) a comparative examination of the regulatory frameworks prior to and after the enactment of Law No. 3 of 2025; (2) an analysis of the ratio decidendi in Military Court Decision No. 50-K/PM.I-04/AD/V/2025; and (3) the development of a new concept concerning the renewal of the criminal responsibility system. This integrated approach sets the current study apart from the existing literature (Gusman, 2023; Montana, Lubis, & Affan, 2023; Subagiyo, 2023; Sarjono & Ma'ruf, 2021; Pramono, 2021) and fills a gap in the understanding of how criminal responsibility should be established for this particular type of military offence (Manikingrat, Fitriyono, & Hartiwiningsih, 2026).

The study thus raises two research questions: firstly, what is the present form of criminal responsibility concerning the misuse of military facilities and equipment by soldiers in the TNI within the Indonesian criminal law system? Secondly, how should the criminal responsibility system for TNI soldiers in relation to such misuse be revised in order to establish an ideal framework which guarantees legal certainty, justice, and utility?

2. Literature Review

The two main theories upon which this research is based are the theory of criminal responsibility and the theory of legal renewal.

The dualistic theory of criminal responsibility (*teori dualistis*) is the one applied in this study and clearly sets apart the criminal act (*strafbaar feit*) from culpability (*schuld*). Even if a criminal act exists, criminal responsibility cannot be imposed unless culpability is separately proven (Hiariej, 2024). According to this approach, criminal responsibility is examined in three respects: (a) the person's capacity to be held responsible (*kemampuan bertanggung jawab*), (b) the psychological link between the actor and the act, which includes either intention (*dolus*) or negligence (*culpa*), and (c) the absence of any justifying or excusing circumstances (Moeljatno, 2015). This theoretical framework is especially suitable for the analysis of military offences since it enables a detailed assessment of whether a soldier's misuse of military resources amounts merely to a disciplinary breach or constitutes a criminal offence deserving of penal sanctions (Muladi & Priyatno, 2015).

The theory of legal renewal (teori pembaharuan hukum) serves as the framework for assessing whether the current regulations are adequate and for establishing ideal legal concepts. In the case of criminal law, legal renewal involves not just the amendment of the statutory provisions but also bringing the law into line with societal developments, the values of justice, and the aims of criminal law (Arief, 2005). This theory stresses that legal reform should take into account philosophical, juridical, and sociological aspects in order to make sure that the resulting norms offer legal certainty as well as secures justice and utility (Arief, 2011; Rahardjo, 2009).

Various studies have looked at different aspects of Indonesian military criminal law. Andianto (2022) carried out normative legal research into the redefinition of desertion offences in the context of Military Operations Other Than War, using statutory, comparative and conceptual methods. Rabiatal 'Adawiah (2025) looked at the revision of the sentencing system in the Military Penal Code after the National Penal Code had been passed. Gusman (2023) looked into criminal cases involving corruption by active TNI soldiers. Muhammad and Hoetomo (2025) examined the conflicts of jurisdiction between military and civil courts, pointing out the problems relating to accountability. Manikingrat, Fitriyono and Hartiwiningsih (2026) investigated the criminal law consequences of the expansion of TNI's powers following the enactment of Law No. 3 of 2025. Montana, Lubis and Affan (2023) studied narcotics abuse by TNI soldiers by means of a case study based on Military Court Decision No. 109-K/PM.I-02/AL/XI/2022. Sarjono and Ma'ruf (2021) analysed the powers of military judges when deciding cases involving TNI soldiers. Subagiyo (2023) looked at issues of criminal accountability in cases of desertion. Saragih (2024) studied the problems and future possibilities of regulating connectivity cases. Pramono (2021) analysed enforcement of the law against TNI soldiers by applying a progressive legal approach.

Although these studies have made a significant contribution to our understanding of military criminal law in Indonesia, none of them deals with the establishment of criminal responsibility in cases of the misuse of military facilities and equipment. The present study overcomes this deficiency by concentrating on this particular category of offence and at the same time incorporating regulatory comparison, analysis of judicial decisions, and normative reformulation.

3. Research Method

This is normative legal research or doctrinal research which involves the examination of the legal norms, principles, doctrines and judicial decisions relating to the subject of the research (Marzuki 2017). The research will employ four approaches namely the statutory approach, the case approach, the conceptual approach and the comparative approach.

Statutory approach: the provisions of Law No. 34 of 2004 as amended by Law No. 3 of 2025, Law No. 31 of 1997 on Military Justice, the National Penal Code (Law No. 1 of 2023) and the KUHPM. Case approach: the legal reasoning and ratio decidendi of Military Court Decision No. 50-K/PM.I-04/AD/V/2025. Conceptual approach: the concepts of criminal responsibility and legal renewal, with particular reference to the dualistic theory of criminal responsibility and the theory of legal renewal. Comparative approach: the comparison of the regulatory framework prior to and after Law No. 3 of 2025 in order to determine the nature of the normative changes and their implications.

Legal materials are of three types (Soekanto & Mamudji, 2013). The primary materials are the 1945 Constitution, Law No. 34 of 2004, Law No. 3 of 2025, Law No. 31 of 1997, Law No. 1 of 2023, the KUHPM and the court decision under study. The secondary materials are textbooks, journal articles, research reports and scholarly opinions on criminal law, military criminal law and legal renewal (Hiariej, 2024; Moeljatno, 2015; Arief, 2005). The tertiary materials are legal dictionaries and encyclopedias. Data collection is carried out through systematic library research (inventory of legislation and judicial decisions, doctrinal study and cross checking of sources). The analysis is conducted qualitatively using the methods of legal interpretation (grammatical, systematic, teleological and authentic), legal construction and legal syllogism with deductive reasoning being the main mode of inference.

4. Results and Discussion

4.1 The Current Form of Criminal Responsibility for TNI Soldiers Regarding Misuse of Military Facilities and Equipment

The current regime of criminal liability for TNI personnel is one of fragmentation and normative uncertainty. Prior to its amendment, Law No. 34 of 2004 (in Art 65(2)) provided that TNI personnel who commit general crimes would be tried in general courts. Art 74 of that law however, postponed the implementation of that provision until a new Military Justice Law is passed. The effect of this is that Law No. 31 of 1997 on Military Justice is still in

force and therefore military courts continue to have jurisdiction over offences committed by TNI personnel which are not strictly military in nature (Pebrianto 2024; Muhammad & Hoetomo 2025).

The Law No. 3 of 2025 (on the TNI) has substantially restructured the TNI's institutional framework. It has broadened the TNI's mandate in Military Operations Other Than War (OMSP) to include cyber threats and the protection of citizens overseas. It has also increased the number of active TNI soldiers who may be placed in civilian institutions from 10 to 14 (Manikingrat et al., 2026). The institutions in which soldiers may be placed include the Attorney General's Office, the Maritime Security Agency, the National Counter-Terrorism Agency and the National Disaster Management Agency. The implications for criminal liability are significant in that a soldier serving in a civilian institution may be found to have committed an offence which lies in a grey area of jurisdiction (Imuly, 2026).

With respect to the misuse of military facilities and equipment per se the normative framework is still lacking. The KUHPM does contain provisions on military offences including insubordination, desertion and abuse of authority (Sopacua, Yuliani & Titahelu, 2021; Subagiyo, 2023). There is no specific provision in the KUHPM for the misuse of military facilities and equipment as an offence in itself. Such conduct would be prosecuted under the general provisions of abuse of authority, embezzlement or destruction of state property as the case may be (Nainggolan, Esther & Sinaga, 2025; Ndruru, 2024).

The ratio decidendi of Military Court Decision No. 50-K/PM.I-04/AD/V/2025 is instructive as to the way the courts operate. The panel in that case was considering a TNI soldier who was charged with the misuse of military facilities and equipment. The way the court went about establishing criminal liability is by identifying the elements of the offence, the guilt of the accused and the absence of any excuse or justification. The decision also highlights the difficulties of applying general criminal law provisions to the particular circumstances of military personnel where the conduct in question may fall somewhere between a disciplinary infraction and a criminal offence (Hartawan, Andrisman & Husin, 2024).

The normative gaps are: (1) no definition of an offence for the misuse of military facilities and equipment; (2) the lack of clarity in the demarcation of jurisdiction between military and general courts; (3) no clear criteria to differentiate between a disciplinary offence and a criminal offence; and (4) the incomplete implementation of Article 65(2) of the TNI Law which is still pending the passage of a new Military Justice Law (Saragih 2024; Lubis 2024).

4.2 Renewal of the Criminal Responsibility System for TNI Soldiers Regarding Misuse of Military Facilities and Equipment

A comprehensive approach is needed if the criminal responsibility system is to be renewed for soldiers in the TNI, one which takes into account both the normative content and the institutional mechanisms. The dualistic theory of criminal responsibility forms the theoretical basis for this renewal, highlighting the distinction between the criminal act and culpability while at the same time taking into account the particular features of the military environment (Hiariej, 2024; Moeljatno, 2015).

In the first place, the renewal must involve the establishment of specific provisions relating to breaches involving the misuse of military facilities and equipment. Such provisions should clearly state the forbidden actions, the mental element required, and the penalties applicable. Attention should be paid to different levels of severity, extending from minor disciplinary breaches to serious criminal offences which call for penal sanctions (Arief, 2005; Arief, 2011).

Second, the reform should make clear the boundaries of jurisdiction between military and civilian courts. The delay in implementing Article 65(2) of the TNI Law should be dealt with by passing a new Military Justice Law that is in line with the National Penal Code. This alignment should set out clear criteria for deciding whether a given offence comes within the jurisdiction of military or civilian courts, considering the nature of the offence, its connection with military duties, and the interests at stake (Muhammad & Hoetomo, 2025; Ganu & Yaqin, 2026).

Thirdly, the renewal must reinforce the accountability mechanisms applicable to TNI soldiers who are serving in civil positions. Since Law No. 3 of 2025 has led to an increase in the number of soldiers being posted to civilian organisations, there now arise new situations in which military personnel could commit offences that come within the scope of criminal responsibility. It is essential to have clear procedures for determining jurisdiction and for ensuring accountability in these circumstances if impunity is to be avoided and legal certainty is to be secured (Manikingrat et al., 2026; Imuly, 2026).

Fourth, the reform should include the principles of legal certainty, justice, and utility. In order to ensure legal certainty, the rules relating to criminal responsibility must be clear and predictable. For justice it is necessary that

the sanctions imposed be proportional both to the seriousness of the offence and to the degree of culpability of the person responsible. As for utility, the legal system should be such as to effectively deter misconduct while at the same time supporting the TNI's operational effectiveness (Arief, 2005; Rahardjo, 2009).

The renewal framework is in keeping with the general aims of criminal law reform in Indonesia, especially those concerned with bringing the National Penal Code into line with specialised criminal laws (Arief, 2011; Hiariej, 2024). Since it deals with the particular gaps identified in this study, the renewal framework helps to establish a more coherent and effective military criminal law system.

5. Conclusion

The study shows that the present legal framework concerning the criminal liability of TNI soldiers for misusing military facilities and equipment is marked by normative gaps and jurisdictional ambiguity. The fact that there are no specific provisions on the offence, the delay in implementing Article 65(2) of the TNI Law, and the absence of clear criteria for differentiating between disciplinary violations and criminal offences lead to legal uncertainty and inconsistent judicial practice. In order to renew the criminal responsibility system it is necessary to take a comprehensive approach which involves: first, drawing up specific provisions on offences concerning the improper use of military facilities and equipment; second, clarifying the boundaries of jurisdiction by passing a new Military Justice Law; third, reinforcing the systems of accountability applicable to soldiers who are serving in civil positions; and fourth, incorporating the principles of legal certainty, justice and utility. The study suggests that when carrying out legislative reform it should be aimed at passing a new Military Justice Law which is in line with the National Penal Code and includes clear normative advice regarding the criminal responsibility of TNI soldiers. Further research should look into the practical implementation of such reforms and the effect that they have on military discipline and operational effectiveness.

References

- Andianto. (2022). *Reformulasi Tindak Pidana Desersi dalam Mendukung Operasi Militer selain Perang* [Master's thesis, Universitas Gadjah Mada].
- Arief, B. N. (2005). *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*. Citra Aditya Bakti.
- Arief, B. N. (2011). *Pembaharuan Hukum Pidana dalam Perspektif Kajian Teoritis, Filosofis, dan Sosiologis*. Kencana Prenada Media Group.
- Bawana, A. S., Cahyono, H., & S., F. K. (2024). Law enforcement of Indonesian National Army soldiers who commit criminal acts against superiors. *Aurelia Jurnal Penelitian dan Pengabdian Masyarakat Indonesia*, 4(1), 521–532. <https://doi.org/10.57235/aurelia.v4i1.3856>
- Ganu, F., & Yaqin, K. (2026). Dekonstruksi hukum acara koneksitas dalam penegakan hukum tindak pidana korupsi oleh Tentara Nasional Indonesia. *Jurnal Ilmu Hukum Humaniora dan Politik*, 6(5), 4050–4061. <https://doi.org/10.38035/ijhph.v6i5.9160>
- Gusman, D. (2023). Handling criminal cases of corruption involving active Indonesian National Army (TNI) soldiers. *Journal of Law, Politic and Humanities*. <https://doi.org/10.38035/ijph.v3i4.262>
- Hadi, I., Triadi, I., & Sagala, P. (2025). The expansion of legal application of military law on legal subjects that equated with the military based on Republic of Indonesia Law. *Policy Law Notary And Regulatory Issues (Polri)*, 4(4), 706–718. <https://doi.org/10.55047/polri.v4i4.1958>
- Hartawan, D. B., Andrisman, T., & Husin, B. R. (2024). Legal considerations of military judges regarding drug abuse by TNI. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 3(2), 93–113. <https://doi.org/10.35912/ijhham.v3i2.2961>
- Hiariej, E. O. S. (2024). *Prinsip-Prinsip Hukum Pidana: Edisi Penyesuaian KUHP Nasional*. Rajagrafindo Persada.
- Imuly, A. M. M. (2026). Legal analysis of the expansion of the placement of active-duty military personnel in ministries/agencies and civil service positions. *Jurnal Indonesia Sosial Sains*, 7(4), 1466–1479. <https://doi.org/10.59141/jiss.v7i4.2305>
- Lubis, A. F. (2024). The implementation of dishonorable discharge for Indonesian National Armed Forces (TNI) soldiers as a means of law enforcement. *Eksekusi: Jurnal Ilmu Hukum dan Administrasi Negara*. <https://doi.org/10.55606/eksekusi.v2i1.1079>
- Manikingrat, J. H. D., Fitrono, R. A., & Hartiwiningsih. (2026). Implikasi hukum pidana terhadap perluasan kewenangan TNI pasca Undang-Undang Nomor 3 Tahun 2025. *Amandemen*, 3(1), 110–123. <https://doi.org/10.62383/amandemen.v3i1.1556>

- Marzuki, P. M. (2017). *Penelitian Hukum*. Kencana Prenada Media Group.
- Moeljatno. (2015). *Asas-Asas Hukum Pidana*. Rineka Cipta.
- Montana, V., Lubis, M. Y., & Affan, I. (2023). Penegakan hukum terhadap prajurit TNI yang melakukan tindak pidana penyalahgunaan narkoba (Studi Putusan Pengadilan Militer I-02 Nomor 109-K/PM.I-02/AL/XI/2022). *Jurnal Meta Hukum*, 2(2), 168–181. <https://doi.org/10.47652/jmh.v2i2.431>
- Muhammad, R., & Hoetomo, H. K. (2025). Mengadili prajurit TNI di pengadilan umum: Konflik yurisdiksi dan akuntabilitas pidana. *Jurnal Hukum Pidana Indonesia*. <https://doi.org/10.67468/jhpi.v2i1.29>
- Muladi, & Priyatno, D. (2015). *Pertanggungjawaban Pidana Korporasi* (Edisi Ketiga). Kencana.
- Nainggolan, Y. E. J., & Sinaga, J. (2025). Discussion criminal offense of fraud committed by members of the Indonesian National Army (TNI). *Indonesian Journal of Law and Justice*. <https://doi.org/10.47134/ijlj.v2i3.3598>
- Ndruru, D. (2024). Perspektif hukum pidana terhadap tindak pidana penipuan oleh oknum TNI berdasarkan keadilan restoratif. *Law Development and Justice Review*, 7(2), 158–174. <https://doi.org/10.14710/djr.7.2024.158-174>
- Pebrianto, R. (2024). Kebijakan hukum pidana tentang pemeriksaan prajurit TNI yang melakukan tindak pidana umum. *Seikat Jurnal Ilmu Sosial Politik dan Hukum*, 3(1), 71–80. <https://doi.org/10.55681/seikat.v3i1.1194>
- Pramono, B. (2021). Law enforcement of Indonesian National Army (TNI) soldiers with a progressive legal approach. *Hang Tuah Law Journal*. <https://doi.org/10.30649/htlj.v5i2.51>
- Rabiatul 'Adawiah. (2025). *Pembaharuan Sistem Pemidanaan dalam Kitab Undang-Undang Hukum Pidana Militer Pasca Berlakunya Kitab Undang-Undang Hukum Pidana Nasional* [Master's thesis, Universitas Gadjah Mada].
- Rahardjo, S. (2009). *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Genta Publishing.
- Saragih, I. A. H. (2024). Problematika dan prospek pengaturan proses hukum penganan perkara koneksitas. *The Prosecutor Law Review*, 2(3). <https://doi.org/10.64843/prolev.v2i3.55>
- Sarjono, & Ma'ruf, U. (2021). Legal analysis of authority on military judges in judging of Indonesian National Army (TNI). *Law Development Journal*. <https://doi.org/10.30659/ldj.3.2.371-377>
- Soekanto, S., & Mamudji, S. (2013). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Pers.
- Sopacua, M. G., Yuliani, A. N., & Titahelu, J. A. S. (2021). Sanksi pidana terhadap pelaku tindak pidana insubordinasi yang dilakukan oleh Tentara Nasional Indonesia (TNI). *Jurnal Masohi*, 2(1), 23. <https://doi.org/10.36339/jmas.v2i1.358>
- Subagiyo, D. T. (2023). Criminal accountability of members of the Indonesian National Army (TNI) who perform desertion. *International Journal of Social Science and Human Research* 06(06). DOI:10.47191/ijsshr/v6-i6-23

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