

The Urgency Of Changing Law Number 31 Of 1997 Concerning Military Courts

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ABSTRACT

The discourse on revising Law Number 31 of 1997 concerning Military Justice is gaining momentum. Various opinions have emerged, presenting compelling reasons for the law's amendment. The Law on Military Justice was enacted during the New Order regime, which was rife with the political interests of the ruling elite. Furthermore, the substance of the law is no longer in line with legal developments in society, particularly regarding the authority of military courts, which are considered too absolute. The revision of this law must emphasize the implementation of military justice based on internal military violations. Crimes classified as general crimes, including war crimes, corruption, and human rights violations, must be tried in general courts.

Keywords: urgency, change, military justice, Indonesian National Armed Forces.

A. Introduction

The influence of modernization and social change has brought about changes in various fields of law. This occurs not only in developing countries, but also in developed countries. Progress in modern society has also increased the diversity of interests and expanded the possibility of conflicts of interest, as well as violations or crimes committed by their citizens.¹ In social life, the behavior of individuals or social groups is bound by various social norms or laws, both written and unwritten.² Although bound by applicable norms and laws, violations of such norms and laws always occur in social life, namely through the emergence of various types of criminal acts within society. A criminal act is an act that violates criminal regulations, is punishable by law, and is committed by a guilty person, who must be held accountable.³

The perpetrators of crimes are not always civilians or members of society; there are also criminal actors involving certain members of the Indonesian National Armed Forces. In order to ensure and support the implementation of the military's important roles and duties, special regulations have been established that apply to military personnel in addition to general rules. These special regulations that apply to members of the military are referred to as Military Criminal Law.⁴

If the perpetrator of the crime is a member of the military, then the legal process is

¹Ninik Widiyanti and Yulius Waskita, *Crime in Society and Its Prevention*, (Jakarta: Bina Aksara, 1987), p. 4.

²Umar Sholehudin, *Law and Social Justice*, (Malang: Setara, 2011), p. 29.

³JCT Simorangkir, *Indonesian Law Lessons*, (Jakarta: Gunung Agung, 1959), p. 229.

⁴Kadek Wijana et al., "Corruption Crime Trials for Military Members", *Journal of Legal Analogy*, Vol. 2, No. 3, Faculty of Law, Warmadewa University, p. 404.

carried out through the military justice system. Military justice in Indonesia is regulated under Law Number 31 of 1997 concerning Military Courts, which is still in effect today, despite various controversies. Calls from civil society to revise Law Number 31 of 1997 concerning Military Courts have increasingly gained attention. Various differing opinions have emerged, presenting reasons for the need to amend the law. This is quite reasonable, considering that Law Number 31 of 1997 concerning Military Courts was enacted during the New Order era, which was heavily influenced by political interests at the time. In addition, the substance of the law is no longer in line with legal developments in society, particularly those related to the military justice system itself.

A TNI soldier is a person who is educated, trained, and prepared for combat. An Indonesian citizen who is appointed as a member of the TNI, in carrying out their duties, is not only required to adhere to the values of Pancasila, the Soldier's Oath (Sapta Marga), the Soldier's Oath of Loyalty (Sumpah Prajurit), and the Eight Obligations of TNI Soldiers (8 Wajib TNI), but is also expected to always obey all applicable laws and regulations specifically governing TNI members. To ensure and support the implementation of the important roles and duties of the TNI, special regulations have been established that apply to TNI members in addition to general rules. These special regulations applicable to TNI members are referred to as Military Criminal Law. Legislation specifically applicable to TNI members includes, for example, the Military Criminal Code (KUHPM), Law Number 25 of 2014 concerning Military Discipline Law, and other regulations related to the life of TNI soldiers, as well as general legislation such as the Criminal Code (KUHP) and laws governing specific criminal offenses (special crimes). These regulations must be obeyed by every member of the TNI, whether enlisted personnel, non-commissioned officers, or commissioned officers, so that in carrying out their duties they do not act contrary to or harm the TNI institution.

Since 2005, calls to immediately revise Law Number 31 of 1997 concerning Military Courts have been voiced. This system is considered to be a tool for the perpetuation of impunity, as it has jurisdiction to try military personnel who commit general criminal offenses. Ideally, they should be tried in civilian courts. As a result, various cases of serious human rights (HAM) violations continue to be adjudicated in military courts. The proceedings are closed, lack transparency, and do not accommodate the interests of victims. Consequently, it is predictable that those who are prosecuted are only field-level perpetrators, with very light sentences, while the truth is not fully revealed. Furthermore, the rights of victims also remain unfulfilled. However, by the end of 2009, this issue seemed to have faded away. The long debate in the House of Representatives (DPR) throughout that year regarding the formulation of amendments to Law Number 31 of 1997 concerning Military Courts appeared to have stalled. The DPR did not even include it as a priority agenda in the National Legislation Program (Prolegnas) aimed at improving the accountability of the Indonesian National Armed Forces (TNI), which has remained unresolved. This indicates that the commitment of the TNI to reform itself was not wholehearted, and it was also not strongly supported by the government.⁵

The discourse on reintroducing amendments to Law Number 31 of 1997 concerning Military Courts resurfaced when the Indonesian National Armed Forces (TNI) raised objections regarding the Operasi Tangkap Tangan (OTT) conducted by the Corruption Eradication Commission (KPK) against the Head of the National Search and Rescue Agency (Basarnas), Air Marshal of the TNI Henri Alfiandi, and the Coordinator of the Administrative Staff of the Head of Basarnas, Lieutenant Colonel Adm. Afri Budi Cahyanto. Following the

⁵ Anonymous, "Study of the Military Justice System in Indonesia", available at: https://perpustakaan.komnasperempuan.go.id/web/index.php?p=show_detail&id=3896, accessed January 25, 2026.

designation of the suspects, the TNI stated that the KPK had violated regulations. The Commander of the Military Police Center (Danpuspom) of the TNI, Major General Agung Handoko, stated that the authority to determine legal action against active TNI members lies with the Military Police, not KPK investigators. However, under such pressure, the KPK publicly issued an apology through a press conference and handed over the case to the Military Police Center (Puspom TNI), on the grounds that both individuals were active-duty TNI personnel under military court jurisdiction.⁶

The argument that active TNI members who commit criminal acts fall under the jurisdiction of military courts indicates an exclusivity of the TNI within Indonesia's judicial system, which tends to reinforce a perception of legal immunity within the military institution. Upon closer examination, this statement reflects a misinterpretation in the implementation of Law Number 31 of 1997 concerning Military Courts. Referring to TAP MPR Number VII/MPR/2000 on the Role of the Indonesian National Armed Forces (TNI) and the Role of the Indonesian National Police (Polri), Article 3 paragraph (4) of TAP MPR Number VII/MPR/2000 clearly stipulates that "Soldiers of the Indonesian National Armed Forces are subject to military court jurisdiction in cases of violations of military law and are subject to general court jurisdiction in cases of violations of general criminal law". Based on the explanation above, the author considers it necessary to propose the idea that an immediate revision of Law Number 31 of 1997 concerning Military Courts should be carried out, as it is deemed no longer in line with the current situation and developments in society and legal practice.

B. Research Method

This research is descriptive-analytical in nature, and the type of research used is normative legal research, namely legal research that examines secondary data (library research). Normative legal research is also referred to as doctrinal legal research. In this type of legal research, law is often conceptualized as what is written in legislation (law in books), or law is conceptualized as rules or norms that serve as standards for appropriate human behavior. Therefore, first, the data source consists solely of secondary data, which includes primary legal materials, secondary legal materials, and tertiary legal materials.⁷ Normative legal research is research that focuses its study on specific legislation, or on law and legislation as the primary source of legal materials.⁸ Data collection techniques are carried out through library research. The research data obtained are then analyzed qualitatively using descriptive sentences, in order to produce a systematic discussion that is understandable and can be accounted for.

C. Analysis and Discussion

1. Definition of the Military

The term "military" originates from the word "Miles" in Greek, which means a person who is armed and prepared to engage in battles or warfare, particularly in the context of national defense and security.⁹ In French, the term "militaire" is more prominently used and is interpreted as an individual or person assigned to fight for or defend the

⁶Anonymous, Available at: <https://kontras.org/2023/08/07/The-government-must-immediately-revise-Law-No.-31-of-1997-concerning-military-justice-to-end-the-culture-of-impunity-and-injustice/>, accessed 25 January 2026.

⁷Amiruddin and H. Zainal Asikin, *Introduction to Legal Research Methods*, (Depok: Raja Grafindo, 2020), p. 118.

⁸*Ibid.*, p. 235.

⁹S.R. Sianturi, *Military Criminal Law in Indonesia*, (Jakarta: Indonesian National Armed Forces Legal Development Agency, 2010), p. 28.

proclamation of independence. The definition of the military according to Article 1 point 20 of Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI) refers to the armed forces of a state that are regulated based on statutory provisions.¹⁰

Considering the primary duties of the military, in this case the Indonesian National Armed Forces (TNI), which are very demanding in maintaining and upholding the sovereignty of the nation and the state, it is increasingly recognized that special regulations are needed for military personnel in order to support and ensure the realization of these core duties. Therefore, military members in a state are subject to legal norms that are stricter than those applicable to citizens in general. However, these special and stricter legal norms are contained within a legal framework that is known in all countries as military law.¹¹

2. History of the Indonesian National Armed Forces (TNI)

The Indonesian National Armed Forces (TNI) is the name of the armed forces of the Republic of Indonesia. At its initial formation, this institution was called the People's Security Army (Tentara Keamanan Rakyat/ TKR), then TKR was dissolved and replaced by the Indonesian Army (Tentara Republik Indonesia/ TRI), and later renamed the Armed Forces of the Republic of Indonesia (Angkatan Bersenjata Republik Indonesia/ ABRI). Subsequently, following the separation between the military and the police, the name was changed again to the Indonesian National Armed Forces (TNI), which remains in use today. The TNI consists of three branches (services), namely the Indonesian Army (TNI Angkatan Darat), the Indonesian Navy (TNI Angkatan Laut), and the Indonesian Air Force (TNI Angkatan Udara). The TNI is led by a Commander of the TNI (Panglima TNI), while each branch is headed by a Chief of Staff. During the era of Guided Democracy until the New Order period, the TNI was once merged with the police force. This merger was collectively known as ABRI (Armed Forces of the Republic of Indonesia). In accordance with TAP MPR Number VI/MPR/2000 concerning the Separation of the TNI and Polri and TAP MPR Number VII/MPR/2000 concerning the Roles of the TNI and Polri, since August 18, 2000, the two institutions have been officially separated again.¹²

During the New Order era in Indonesia, the military was more commonly referred to as ABRI (Armed Forces of the Republic of Indonesia). ABRI was an institution consisting of both the armed forces and the national police (Polri). In the early period of the New Order, the branches of the armed forces were referred to as ADRI (Indonesian Army), ALRI (Indonesian Navy), and AURI (Indonesian Air Force). However, since October 1971, the official designation of the armed forces was restored to the Indonesian National Armed Forces (TNI), so that each branch was named the Indonesian Army (TNI Angkatan Darat), the Indonesian Navy (TNI Angkatan Laut), and the Indonesian Air Force (TNI Angkatan Udara). During the New Order era under President Soeharto, ABRI also participated in Indonesia's political sphere.

In 2000, the Indonesian National Police (Kepolisian Negara Republik Indonesia) officially became an independent institution and a separate entity from the military. The official name of the Indonesian military was also changed from the Armed Forces of the Republic of Indonesia (ABRI) back to the Indonesian National Armed Forces (TNI). Three new laws were enacted, namely Law Number 2 of 2002 concerning the Indonesian

¹⁰Indonesia, *Law on the Indonesian National Armed Forces*, Law Number 34 of 2004, Article 1 number 20.

¹¹ Anonymous, available at: <https://repository.uhn.ac.id/bitstream/handle/123456789/5665/ERICSON%20ELTHON%20JUARA%20SIAHAAN.pdf?sequence=1&isAllowed=y>, accessed January 25, 2026.

¹²Anonymous, available at: https://id.wikipedia.org/wiki/Tentara_Nasional_Indonesia, accessed 25 January 2026.

National Police, Law Number 3 of 2002 concerning National Defense, and Law Number 34 of 2004 concerning the Indonesian National Armed Forces. The Commander of the TNI (Panglima TNI) is currently nominated by the President from among the Chiefs of Staff of the armed forces branches and must obtain approval from the House of Representatives (DPR). The political rights of the TNI were abolished, and the dual-function (dwifungsi) role of ABRI was also eliminated.

The Indonesian National Armed Forces (TNI) has experienced significant development and organizational refinement since its establishment in order to achieve effectiveness and efficiency in carrying out its roles. It began with the formation of the People's Security Agency (Badan Keamanan Rakyat) on 22 August 1945, which later developed into the People's Security Army (Tentara Keamanan Rakyat) on 5 October 1945. The People's Security Army was then renamed the Indonesian Army (Tentara Republik Indonesia/ TRI) on 23 January 1946. The TNI was officially established on 3 June 1947 as a unification of two armed forces. In 1962, the TNI was merged with the National Police (Polri) to form the Armed Forces of the Republic of Indonesia (Angkatan Bersenjata Republik Indonesia/ ABRI). On 1 April 1999, the TNI and Polri were officially separated again. The term ABRI was replaced back with TNI. The TNI is divided into three branches (services), namely the Indonesian Army (TNI Angkatan Darat), the Indonesian Air Force (TNI Angkatan Udara), and the Indonesian Navy (TNI Angkatan Laut).¹³

3. Jurisdiction of Courts within the Military Justice System

Military courts are a judicial institution within the military sphere that is established to uphold justice while taking into account the elements of national defense and security. Military courts also represent a concrete manifestation for society that law enforcement continues to be upheld even when violations are committed by military personnel.¹⁴

If a TNI soldier commits a criminal act, they will be processed in accordance with applicable law. Criminal proceedings involving TNI personnel are carried out through a special court, namely the military court. The trial process in military courts is generally similar to that of general courts, as it is open to the public, except in cases involving morality offenses. However, in practice, it is rare for civilians to attend and follow the court proceedings.¹⁵

Military Justice is the exercise of judicial power within the armed forces to uphold law and justice while taking into account the interests of national defense and security. The institutions within the scope of military justice are bodies that exercise judicial power within the military court system, which include: Military Courts (Dilmil at the first level), Military High Courts (Dilmilti), Military Supreme Courts (Dilmiltama), and Battlefield Military Courts. The Oditurat is an implementing body of state governmental power in the field of prosecution and investigation within the Armed Forces, based on delegation from the Commander-in-Chief. It has duties and functions similar to those of the public prosecutor's office, while also considering the interests of national defense and security.¹⁶

In carrying out national defense and security, military interests are prioritized above

¹³Anonymous, available at: <https://indonesiabaik.id/infografis/sejarah-berdirinya-tni>, accessed January 25, 2026.

¹⁴Aulia Jihan Rifani, Satria Unggul Wicaksana, "The Independence of Military Justice Against TNI Soldiers as Perpetrators of Narcotics Crimes," *Audito Comparative Law Journal*, Faculty of Law, Muhammadiyah Surabaya University, Indonesia, Vol. 2. Issue 3. 2021, p. 133.

¹⁵Depy Wyldan Syafari, Hartana, G. Nyoman Tio Rae, "Law Enforcement Against Indonesian National Armed Forces (TNI) Soldiers Who Perpetrate Narcotics Abuse Crimes to Achieve a Sense of Justice", *Veritas: Journal of the Postgraduate Program in Law*, Bung Karno University, Vol. 9 No. 2 of 2023, p. 98.

¹⁶ <https://dilmil-surabaya.go.id/pengadilan-militer/peradilan/peradilan-militer>, accessed February 19, 2026.

group and individual interests. However, in judicial proceedings, military interests are always balanced with the public interest.¹⁷

The Military Court and the Military High Court sit to examine and decide criminal cases at the first instance level, consisting of 1 (one) Chief Judge and 2 (two) Associate Judges, attended by 1 (one) Military Prosecutor (Oditur Militer/Oditur Militer Tinggi) and assisted by 1 (one) Registrar. The Military High Court also sits to examine and decide disputes concerning Administrative Affairs of the Armed Forces at the first instance level, consisting of 1 (one) Chief Judge and 2 (two) Associate Judges, assisted by 1 (one) Registrar. The Military High Court and the Main Military Court sit to examine and decide criminal cases at the appellate level, consisting of 1 (one) Chief Judge and 2 (two) Associate Judges, assisted by 1 (one) Registrar.

The jurisdiction of courts within the military justice system has been clearly regulated in Article 9 of Law Number 31 of 1997 concerning Military Courts, which stipulates that courts within the military judiciary are authorized to:

- a. To adjudicate criminal offenses committed by a person who, at the time of committing the offense, is: (a) a soldier; (b) a person who by law is treated as equivalent to a soldier; (c) a member of a group, service, agency, or body that is treated or considered as a soldier under the law; (d) a person who does not fall under points (a), (b), and (c), but who, based on the decision of the Commander with the approval of the Minister of Justice, must be tried by a court within the military justice system.
- b. To examine, adjudicate, and resolve disputes concerning the Administrative Affairs of the Armed Forces.
- c. To combine claims for compensation with the related criminal case upon the request of the injured party as a result of the harm caused by the criminal act that forms the basis of the indictment, and simultaneously decide both cases in a single judgment.

When viewed from the process of handling criminal cases by the Military Courts, it is essentially similar to the procedures for resolving criminal cases in the broader criminal justice system. Within the criminal justice system, there are four stages, namely the investigation stage, prosecution stage, trial stage, and the implementation of court decisions.¹⁸

The actions carried out in accordance with the stages of the criminal adjudication process in the military justice system are as follows:¹⁹

a. Investigation stage

The investigation begins with a report, complaint, or when a person is caught in the act (in flagrante delicto) committing the offense. Investigation of disciplinary violations is handled by the Ankum (superior who has the right to punish), while criminal offenses are handled by the Military Police (POM) in cooperation with the Military Prosecutor or Military Oditurate (Otmil). Investigators have the authority to conduct searches, detain suspects for no more than 20 days, and seize any evidence relevant to the crime under investigation. After the investigation is completed, the Military Police (POM) prepare an official investigation report, which is then submitted to the Military Oditur. The next stage is the prosecution phase conducted by the Military Oditur.

b. Prosecution stage

¹⁷Japet Gurusina, "Criminal Liability of TNI Members Who Use Drugs from the Perspective of Military Criminal Law," *Jurnal Diktum*, Vol. 2, No. 3, December 2023, p. 122.

¹⁸Diva Pramesti Islami, Irwan Triadi, "Legal Analysis of the Implementation of Connectivity Courts in Military Court Procedure Law in Indonesia", *Multidisciplinary Scientific Journal*, Vol. 1, No. 10, November 2023, pp. 411-412.

¹⁹Sumaryanti, *Connectivity of Justice in Indonesia*, (Jakarta: Bina Aksara, 1994), p. 15.

The case registration number is generated after the Investigation Report (Berita Acara Pemeriksaan) is received by the Military Prosecutor or Military Oditurate (Otmil). Subsequently, the Military Prosecutor or Otmil will submit recommendations for the settlement of the case to the Case Handling Officer (Perwira Penyerah Perkara/Papera), which may include closing the case, setting it aside, or bringing it to trial. The opinion report of the Military Prosecutor or Otmil will be signed by the Head of the Military Prosecutor's Office or Otmil. If the case settlement agrees with the Head of the Military Prosecutor or Otmil, the case will be closed. If the settlement is accepted by the Head of the Military Prosecutor or Otmil, a Case Closure Decree (Surat Ketetapan Penutupan Perkara/Skeptura) will be issued. A Case Handling Decree (Surat Keputusan Penanganan Perkara/Skeppera) will be issued by Papera when the Military Prosecutor or Otmil decides to transfer the case to trial. The Military Prosecutor or Otmil will then prepare the indictment based on the Skeppera, submit it, and forward it to the Military Court. The Head of the Military Court (Mahmil) will determine the completeness of the case file upon receiving the case transfer letter and indictment. If the Head of the Military Court finds that the file is incomplete, it will be returned to the Military Prosecutor or Oditur Military (Otmil) for completion. Once complete, the Head of Mahmil appoints the panel of judges and sets the trial date for the case.

c. Trial stage

The ordinary examination procedure (as regulated in the Criminal Procedure Code/KUHAP) applies to the entire examination process during the trial, unless otherwise specifically provided in Law Number 31 of 1997 concerning Military Courts. If the defendant is found guilty after the examination trial is completed, he or she will be convicted of committing a criminal act. The judge's decision becomes legally final if the defendant (or their legal counsel) accepts the ruling. The offender will receive a copy of the court decision through the Military Prosecutor or Military Oditurate (Otmil), which specifies the place and duration of the sentence.

d. Execution of the court decision

The defendant will serve the execution of the court decision (sentence) in a military correctional facility if he or she is not subjected to an additional penalty of dismissal from military service. However, if the defendant is imposed an additional penalty of dismissal from military service, then he or she will serve the sentence in a designated civilian correctional institution (state prison).

4. Reasons for the Importance of Amending Law Number 31 of 1997 concerning Military Courts

There are several reasons which, according to the author, urgently require the revision of Law Number 31 of 1997 concerning Military Courts. Before discussing these issues, it is necessary to first explain the function of establishing legislation. Indonesia has declared itself a state based on law (*rechtstaat*), founded on the ideology of Pancasila and the 1945 Constitution. In all policies, the values of morality, personality, and ethical principles of the nation are prioritized, which are rooted in belief in God Almighty and guided by the principle of *Bhinneka Tunggal Ika* in social, national, and state life.²⁰

As a state governed by law, all dimensions of state life must be based on applicable positive law. In carrying out national life, Indonesia incorporates all aspects of regulation as a main and essential component as stipulated in legislation. Legislation serves as an inseparable instrument within the country's legal system. The nation's history and the development of the times have also supported the importance of using legislation as the

²⁰Yogi Prasetyo, "The Urgency of Forming Just Legislation," *Indonesian Journal of Legislation*, Vol. 20, No. 2, June 2023, p. 30.

legal foundation of a state governed by law. In addition, legislation has been positioned as a strategic instrument in every state policy program that is implemented. In implementing government policy programs, a legal basis is certainly required in order to protect them from potential legal issues that may arise. This becomes a consequence that must be fulfilled in the context of legal accountability.²¹

Article 1 paragraph (2) of the 1945 Constitution states that sovereignty is in the hands of the people and is exercised in accordance with the 1945 Constitution. In this article, the executor of people's sovereignty is the people themselves; therefore, it can be said that law is made by the people and for the people. Hence, law must provide benefits and justice for the people themselves.²² The law referred to is positive law as contained in legislation, which forms part of the principles of justice.²³ This principle encompasses privileges or participation in political life. Indonesia, as a state governed by law, adheres to the principle that formally all actions of state organs and society must be based on legislation. Thus, law has a higher degree of certainty. Even if law is understood from the perspective of legal positivism theory, it is separated and free from social elements; therefore, it has no relation to statutory regulations. The entire administration of the state system is regulated by legislation.

State officials are living figures who represent the law. Everything that is considered important by the state has been regulated in legislation, so that its clarity and certainty can be measured. The most important aspect is the achievement of legal certainty, rather than the sense of justice in society. This understanding arises from the narrowing of the meaning of law by adherents of legal positivism, which is supported by the civil law system, which interprets law as what is written in legislation; anything outside of it is not considered law.²⁴ This perspective often ignores various legal facts in the field in the form of social realities within society. The function of law is highly dependent on the objectives of state administration. The existence of law is essentially an instrument for those in power to run the government. In general, the function of law in a state is to regulate society, limit power, serve as a tool of social engineering, and act as an instrument of social reform.²⁵

According to the author, there are several reasons regarding the urgency of amending Law Number 31 of 1997 concerning Military Courts. Among them is that Law Number 31 of 1997 concerning Military Courts must be able to adapt to the development of the times, be oriented toward modern criminal law, and ensure legal certainty. As is known, Law Number 31 of 1997 concerning Military Courts was enacted during the New Order era, which was heavily influenced by the political interests of those in power. Due to the significant authority held by the rulers at that time, it was easy to intervene in the judiciary, including the military justice institutions. This law is now 29 (twenty-nine) years old and therefore needs to be adjusted to the highly dynamic development of society.

In addition, the regulations used as the basis for the establishment of Law Number 31

²¹*Ibid.*

²²Risdiana Izzaty, "The Urgency of Carryover Provisions in the Formation of Laws in Indonesia," *Jurnal HAM*, Vol. 11, No. 1, 2020, pp. 85-98.

²³Mukhlisin, "Justice and Legal Certainty: Questioning Hans Kelsen's Concept of Legal Justice from the Al-Adl Perspective in the Quran," *Media Keadilan Journal of Legal Studies*, Vol. 11, No. 2, 2020, p. 55.

²⁴FX. Adji Samekto, "Disputing the Relationship between Positivism Philosophy and Doctrinal Legal Teachings," *Journal of Legal Dynamics*, Vol. 12, No. 1, 2012, p. 83.

²⁵Anonymous, available at: https://perpustakaan.kasn.go.id/index.php?p=show_detail&id=18&keywords=, accessed January 24, 2026.

of 1997 concerning Military Courts are no longer in force or have been amended by new laws. For example, the 1945 Constitution has been amended four (4) times. Furthermore, Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power is no longer in effect, as it has been replaced by Law Number 48 of 2009 concerning Judicial Power. Law Number 31 of 1997 concerning Military Courts is also still based on Law Number 2 of 1988 concerning Members of the Armed Forces of the Republic of Indonesia, which is no longer valid and has been replaced by Law Number 34 of 2004 concerning the Indonesian National Armed Forces.

The separation of the Indonesian National Police (Polri) from ABRI (now known as the TNI) constitutes a distinct reason for the urgent revision of Law Number 31 of 1997 concerning Military Courts. This is because, in Law Number 31 of 1997 concerning Military Courts, the subject of law is members of the Armed Forces of the Republic of Indonesia (ABRI), while ABRI previously consisted of three branches (TNI-AD, TNI-AL, and TNI-AU) and the police force. Therefore, the use of the term ABRI in Law Number 31 of 1997 concerning Military Courts must be replaced and interpreted as the Indonesian National Armed Forces (TNI) or groups equated with military personnel. This can be achieved through revision or amendment of the Military Courts Law.

If we refer to the explanatory section of Government Regulation of the Republic of Indonesia Number 3 of 2003 concerning the Technical Implementation of Institutional General Courts for Members of the Indonesian National Police, it is stated that prior to the enactment of Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of 2002 Number 2 and Supplement to the State Gazette Number 4168), the Indonesian National Police was part of the Armed Forces of the Republic of Indonesia. Therefore, the legal status of members of the Indonesian National Police was the same as the legal status of other members of the Armed Forces of the Republic of Indonesia (ABRI) and they were subject to military court jurisdiction. With the enactment of Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of 2002 Number 2, Supplement to the State Gazette Number 4168), as regulated in Article 29 paragraph (1), members of the Indonesian National Police are subject to the jurisdiction of the general courts. As a logical consequence of the Indonesian National Police (Polri) being subject to general court jurisdiction, all provisions related to military law, both substantive and procedural, that were applied to members of the Indonesian National Armed Forces no longer apply to members of the Indonesian National Police.

It is also necessary to refer to the provisions of Article 65 paragraphs (2) and (3) of Law Number 34 of 2004 concerning the Indonesian National Armed Forces. Article 65 of Law Number 34 of 2004 concerning the Indonesian National Armed Forces states that:

- (1) Military cadets are subject to the legal provisions applicable to soldiers.
- (2) Soldiers are subject to the jurisdiction of military courts in cases of violations of military criminal law, and are subject to the jurisdiction of general courts in cases of violations of general criminal law as regulated by law.
- (3) If the jurisdiction of the general courts as referred to in paragraph (2) is not functioning, then soldiers shall be subject to the jurisdiction of courts as regulated by law.

That article should serve as a legal basis for implementing the principle of equal and fair treatment before the law. In practice, however, ensuring that TNI members are subject to general courts is very difficult. This is due to the transitional provisions in Article 74 paragraphs (1) and (2) of Law Number 34 of 2004 concerning the Indonesian National Armed Forces. These provisions state that the implementation of Article 65 can only be carried out once new regulations concerning Military Courts have been enacted.

Therefore, prior to the establishment of a new Military Courts Law, all matters must still comply with the provisions of Law Number 31 of 1997 concerning Military Courts.

In line with the substance of Article 65 paragraph (2) of Law Number 34 of 2004 concerning the Indonesian National Armed Forces, ideally TNI soldiers who commit general criminal offenses should be examined and processed through the general court system, not the military court. However, if a TNI soldier commits a military offense regulated in the Military Criminal Code (KUHPM), then the individual is processed and examined through the military justice system. There are several examples of general criminal cases committed by members of the TNI that should have been processed in general courts, but in practice were examined in military courts. For instance: the kidnapping of civilians from Aceh by three members of the Indonesian Army (TNI-AD), the burning of the Ciracas Metro Police Sector Headquarters by several TNI personnel, the premeditated murder case committed by Colonel Inf. Priyanto along with his subordinates by disposing of two traffic accident victims into a river, the attack on the Cebongan Class II-B Correctional Facility in Sleman by members of Kopassus (TNI-AD), the killing of Pastor Yeremia Zambani in Papua, and others.

Military courts are considered to increase the potential for corps spirit bias. The punishment imposed on perpetrators is often not optimal in accordance with the crimes they have committed. At that time, the Commander of the Indonesian National Armed Forces (TNI) pledged not to grant impunity to perpetrators of kidnapping and murder committed by its personnel. Nevertheless, open and transparent general courts would better strengthen the truth and provide greater assurance regarding the commitment of TNI leadership.

In addition to the reasons mentioned above, following the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP) on January 2, 2026, the urgency to immediately revise Law Number 31 of 1997 concerning Military Courts has become even stronger. Law Number 31 of 1997 concerning Military Courts still refers to the provisions of the old KUHP (Law Number 8 of 1981). With the enactment of the new KUHP, significant reforms have been introduced in the criminal procedure system, including the investigation and prosecution mechanisms, the expansion of suspects' and defendants' rights, the strengthening of judges' roles in overseeing the judicial process, and the digitalization of court proceedings. Without revision, there will be a normative disharmony between procedural law in general courts and military courts. The new KUHP strengthens the principles of the presumption of innocence, the right to legal counsel from the earliest stage, oversight of coercive measures (arrest, detention, search), and stricter time limits in handling cases. Meanwhile, Law Number 31 of 1997 concerning Military Courts still grants significant authority to the commanding officer (Ankum) and military prosecutors without control mechanisms as strict as those in the new KUHP. Therefore, revision is necessary to ensure that the rights of soldiers as citizens remain constitutionally protected.

D. Conclusion and Suggestions

The jurisdiction of courts within the military justice system includes adjudicating criminal acts committed by a person who, at the time of committing the offense, holds the status of a soldier or is legally equated with a soldier. The reasons for amending the Military Courts Law include the necessity for the law to adapt to the development of the times, to be oriented toward modern criminal law, and to ensure legal certainty. The revision of the Military Courts Law is important to avoid disharmony with the new KUHP, guarantee the protection of soldiers' human rights, strengthen the independence of military courts,

harmonize national procedural law standards, and provide clarity regarding jurisdictional authority between military courts and general courts. As a suggestion, Law Number 31 of 1997 concerning Military Courts should be urgently revised in order to harmonize it with Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP), ensure legal certainty, strengthen the independence of military courts, prevent impunity, and increase public trust in military justice institutions.

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