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Legal Certainty and the Protection of Civilian Victims in the Military Criminal Justice System

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ABSTRACT
This study examines the legal vacuum arising from the absence of implementing norms for Article 65 of Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI), as well as its implications for legal certainty and the protection of the human rights of civilian victims. Article 65 mandates that TNI personnel who commit general criminal offences be subject to civilian court jurisdiction. However, its implementation is obstructed by Article 74, which makes the applicability of Article 65 contingent upon the enactment of a new law amending Law Number 31 of 1997 concerning Military Courts. Using normative legal research through statutory, conceptual, and comparative approaches, with Australia and the Netherlands as comparative jurisdictions, this study finds that the absence of implementing norms has produced persistent jurisdictional uncertainty. Such uncertainty contradicts the principle of equality before the law and may undermine the right to due process. The study concludes that reform of military jurisdiction through clear and operational legal norms is a prerequisite for ensuring comprehensive justice, legal certainty, and human rights protection for civilian victims.

Keywords: Legal Vacuum; Military Justice; Legal Certainty; Human Rights Protection; Civilian Victims

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INTRODUCTION

The military institution constitutes a *sui generis* entity due to its strategic role and distinctive position within the state's constitutional structure. As the principal pillar of national defence, the military is required to maintain a high degree of discipline and operational readiness in order to respond effectively to threats against state sovereignty. Consequently, many states have established special adjudicatory mechanisms in the form of military courts as instruments for preserving the integrity, discipline, and effectiveness of military institutions. In Indonesia, the military justice system is formally regulated under Law Number 31 of 1997 concerning Military Courts. Normatively, every act classified as a criminal offence committed by a member of the Indonesian National Armed Forces (TNI), or by any legal subject legally equated with military personnel, must be processed through the jurisdiction of the Military Court. This legal framework not only determines the scope of adjudicatory authority but also regulates institutional structure, functions, military criminal procedure, connexity proceedings, and military administrative law (Helmi, 2013).

Military criminal offences are offences committed by military personnel as legal subjects. Article 1 paragraph 13 of Law Number 20 of 2004 concerning the Indonesian National Armed Forces defines a soldier as a member of the TNI. Under the Military Penal Code (*Kitab Undang-Undang Hukum Pidana Militer* / KUHPM), military criminal offences are divided into two categories: purely military offences (*zuiver militaire delicten*) and mixed military offences (*gemengde militaire delicten*). A purely military offence is an offence that can only be committed by a member of the military because

of its specifically military character. By contrast, a mixed military offence refers to an unlawful act that is already prohibited and regulated under general legislation, but for which the prescribed penalty is considered inadequate when the offence is committed by a member of the military (Salam, 2006).

Although the Indonesian Constitution expressly guarantees the principle of equality before the law, law enforcement against TNI soldiers who commit general criminal offences remains trapped within a problematic form of judicial dualism. This situation has generated criticism concerning access to justice for civilians who become victims of criminal acts committed by military personnel. The urgency of this issue is reflected in sentencing data from Military Courts for the period 2023–2025, which recorded a significant number of violence-related cases: 218 decisions involving assault, 15 decisions involving homicide, and 11 decisions involving premeditated murder. These figures not only demonstrate the frequency with which military personnel become involved in criminal cases, but also underscore the need to reassess the effectiveness of military justice mechanisms in providing transparent, accountable, and rights-based protection for civilian victims (Aisyah, 2026).

One case that has attracted substantial public attention is the case of Andrie Yunus. The sequence of events allegedly originated from the perpetrators' personal grievances against the victim arising from his activities in the preceding year. In March 2025, Andrie Yunus interrupted a meeting concerning the revision of the TNI Law at Hotel Fairmont, Jakarta. According to the Military Prosecutor's indictment, this act was perceived by the accused as an insult to the military institution. One year later, between 9 and 11 March 2026, four TNI members—Private Second Class ES, First Lieutenant BHW, Captain NDP, and First Lieutenant SL—allegedly planned an attack. The perpetrators procured a rust-removing chemical solution and conducted surveillance of the victim's travel routes.

The attack culminated shortly after midnight on 12 March 2026 near Jalan Salemba I, Central Jakarta. While Andrie was riding his motorcycle, the perpetrators intercepted him and poured acid onto his body. As a result, the victim sustained chemical burns over 24 percent of his body surface area, including his face, chest, and hands. Following investigations by the National Police and the TNI Military Police, the first hearing was convened on 29 April 2026. This case has generated juridical debate concerning absolute jurisdictional competence, particularly with respect to the demand that the perpetrators be tried before civilian courts in order to ensure transparency and justice for the civilian victim (Irfani, 2026).

In relation to such cases, Article 65 paragraph (2) of Law Number 34 of 2004 concerning the Indonesian National Armed Forces provides that "Soldiers shall be subject to the authority of the military court in matters of violations of military criminal law and shall be subject to the authority of the civilian court in matters of violations of general criminal law as regulated by law." This provision clearly indicates that general criminal offences committed by TNI soldiers against civilians should be adjudicated before civilian courts. Furthermore, Article 65 paragraph (3) of the TNI Law provides that "In the event that the authority of the civilian court as referred to in paragraph (2) is not functioning, soldiers shall be subject to the authority of the court as regulated by law." This provision confirms that, where civilian courts are not functioning, TNI soldiers are subject to judicial authority as regulated by law (Sianturi & Triadi, 2025).

The transfer of cases that should normatively fall within the jurisdiction of civilian courts to military courts has generated debate concerning the exclusive privilege accorded to military personnel involved in general criminal offences. The simultaneous operation of the TNI Law and the Military Courts Law has produced disharmony between these two legislative instruments, resulting in a normative vacuum concerning the jurisdiction of courts over general criminal offences committed by soldiers.

METHOD

This study employs a normative legal, or doctrinal, research method, as defined by Wignjosoebroto (2002). It relies on secondary data consisting of legislation, court decisions, legal theories, and scholarly opinions. Three analytical approaches are applied. First, the statutory approach is used to examine and identify normative vacuums and legislative disharmony between Law Number 34 of 2004 concerning the TNI and Law Number 31 of 1997 concerning Military Courts. Second, the conceptual approach is employed to analyse relevant legal doctrines, principles, and scholarly views. Third, the comparative approach is used to examine military justice frameworks in other jurisdictions, particularly Australia and the Netherlands (Marzuki, 2019).

The legal materials used in this study consist of primary and secondary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 34 of 2004 concerning the TNI, and Law Number 31 of 1997 concerning Military Courts. Secondary legal materials include legal literature, expert doctrines, and national and international journal articles on military justice and legal reform. Data are collected through library research and documentary study, and are analysed using descriptive-analytical techniques, legal synchronisation, and juridical review of the legislative structure in order to identify normative inconsistencies and regulatory inadequacies within the national legal framework.

RESULTS AND DISCUSSION

1. The Normative Vacuum in Article 65 in Conjunction with Article 74 of the TNI Law and Its Implications for Legal Certainty and Human Rights Protection of Civilian Victims

Article 65 paragraph (2) of the TNI Law embodies the aspiration to realise the principle of equality before the law by subjecting military personnel to civilian court jurisdiction when they commit general criminal offences. In practice, however, this reform mandate has not been implemented because the operation of Article 65 is made conditional upon the amendment of the Military Courts Law. MPR Decree Number VI/MPR/2000 concerning the Separation of the TNI and the National Police, as well as MPR Decree Number VII/MPR/2000 concerning the Roles of the TNI and the National Police, indirectly mandated the prompt amendment of the Military Courts Law (Huda & Abdullah, 2024).

The amendment of the Military Courts Law is justified on at least two grounds. First, proceedings within the military justice system are often regarded as insufficiently transparent, making it difficult for the public to access information concerning adjudicatory processes before military courts. Second, the credibility of the military justice system has been questioned because several military court decisions have not been perceived as reflecting justice for the wider community (Araf et al., 2007). This

problem is further complicated by the legal condition established under Article 74 of the TNI Law, which provides:

Article 74 of the TNI Law

a. The provisions referred to in Article 65 shall enter into force upon the enactment of the new law concerning Military Courts.
b. For so long as the new military courts law has not been enacted, the provisions of Law Number 31 of 1997 concerning Military Courts shall remain in force.

This provision has undeniably produced stagnation in the military justice reform process. Although the norm granting civilian courts jurisdiction over soldiers who commit general criminal offences has been formally codified, it cannot be implemented because Article 74 suspends its operation until the enactment of a new Military Courts Law. The absence of such a law has delayed law enforcement against soldiers who commit general criminal offences. As a result, the exclusive privilege enjoyed by military personnel continues to operate to their advantage so long as the legislative condition set out in Article 74 remains unfulfilled (Tamrin & Rochman, 2026).

The aspiration to realise equality before the law therefore remains unrealised under both the TNI Law and the Military Courts Law. According to A.V. Dicey's doctrine of the Rule of Law, the principle of equality before the law requires that every person, regardless of social status, rank, or personal circumstances, be subject to the same ordinary law and to the jurisdiction of ordinary courts (Dicey, 2007). In this context, an offence committed within the civilian legal sphere should be adjudicated before civilian courts, whereas an offence committed within the military legal sphere should be adjudicated before military courts.

The consequences of the normative vacuum in the implementation of Article 65 of the TNI Law are borne directly by civilian society. The limited transparency of military justice proceedings has weakened the sense of justice and legal certainty experienced by victims of general criminal offences committed by soldiers. According to Philipus M. Hadjon, legal protection for citizens may take preventive and repressive forms. Preventive legal protection emphasises public participation in policy-making before the issuance of final and binding decisions. This mechanism functions not only to prevent disputes, but also as an internal control mechanism to ensure that the government exercises discretion carefully and accountably (Sinaulan, 2018). Viewed from Hadjon's theory, the state has failed to provide adequate repressive legal protection for victims of criminal acts committed by military personnel, as envisaged by Article 65 of the TNI Law.

Gustav Radbruch, in explaining the purposes of law, argued that law must be grounded in three interrelated dimensions: justice, legal certainty, and utility. Justice concerns the equal standing of every person before the law; legal certainty concerns the ability of law to function as a clear and binding normative framework; and utility concerns the social objectives that law seeks to achieve (Halilah & Arif, 2021). These three dimensions are inseparable, because any discussion of law and regulation is necessarily connected to justice, certainty, and utility. In this context, civilian victims of criminal acts committed by TNI soldiers are placed in a condition of jurisdictional uncertainty. They cannot ascertain with confidence which court will examine and adjudicate their cases, because the norm that should provide such certainty—Article 65 of the TNI Law—has never become operative since its enactment.

This uncertainty is exacerbated by the fact that military courts, as the forums that remain *de facto* competent, possess structural characteristics that do not fully accommodate the interests of civilian victims. Military judges are active soldiers operating within the chain of command; consequently, the independence of their decisions from institutional military influence cannot be guaranteed in absolute terms. Moreover, civilian victims' access to information concerning proceedings, mechanisms for submitting objections, and guarantees of openness in the military justice process is considerably more limited than in civilian courts (Rini, 2025).

From the perspective of human rights protection, the normative vacuum in the implementation of Article 65 of the TNI Law is inconsistent with several fundamental principles guaranteed by Law Number 39 of 1999 concerning Human Rights. Article 17 of the Human Rights Law provides that every person, without discrimination, is entitled to justice by submitting petitions, complaints, and claims in criminal, civil, or administrative matters, and to be tried through a free and impartial judicial process. The right to a fair and impartial tribunal is a core element of due process of law and cannot be diminished solely on the basis of the special character of the military institution.

This condition also directly intersects with the principle of equality before the law as guaranteed by Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Where the perpetrator of a criminal offence is a civilian, the civilian victim obtains protection through the transparent and accountable civilian court system. However, where the perpetrator is a TNI soldier, the same civilian victim must rely on a judicial forum that is structurally more closed and institutionally oriented toward military interests. This difference in treatment is not based on objectively distinct legal circumstances, but solely on the status of the perpetrator. Such a condition is fundamentally inconsistent with the principle of equality before the law.

Accordingly, the normative vacuum in Article 65 in conjunction with Article 74 of the TNI Law is not merely a technical legislative issue. It is a constitutional problem with concrete implications for the marginalisation of civilian victims' rights and the weakening of the legal protection to which they are entitled. As long as the Military Courts Law remains unamended and Article 65 of the TNI Law remains inoperative, civilian victims will continue to occupy a normatively vulnerable position within Indonesia's criminal justice system.

2. A Comparative Analysis of Indonesia's Military Justice System

The problem of judicial dualism between military and civilian courts, as well as its implications for victim protection, is not unique to Indonesia. Various states have confronted similar challenges and have responded through different models of military justice reform (Rahayu & Triadi, 2025). A comparative analysis of Australia and the Netherlands is therefore relevant for evaluating Indonesia's normative framework, particularly in relation to legal certainty and human rights protection for civilian victims (Junaedi & Moeklas, 2022).

Australia regulates military discipline and justice through the Defence Force Discipline Act 1982 (DFDA) (Denton, 2016). Unlike Indonesia, which continues to maintain a sharp jurisdictional dualism, Australia adopts the principle that criminal acts committed by soldiers against civilians outside the context of military operations generally remain within the jurisdiction of civilian courts. Section 9 of the DFDA limits military jurisdiction to disciplinary offences and criminal acts committed in the context

of military service. Where a soldier commits a general criminal offence against a civilian outside that context, civilian court jurisdiction applies without the need for a complex transitional mechanism such as that found in Indonesia's legal system (Gulam, 2004).

The Australian system also provides concrete institutional guarantees for civilian victims. Civilian victims have equal rights to access judicial proceedings, submit victim impact statements, and receive notifications concerning the progress of cases, as guaranteed by victims' rights legislation applicable across various Australian states. This demonstrates that Australia has addressed the issue of jurisdiction not only normatively, but also through procedural mechanisms that are substantively oriented toward the fulfilment of victims' rights.

The Netherlands provides a more transformative model of military justice reform. Since 1991, the Netherlands has structurally integrated military justice into the civilian court system through the establishment of the *Militaire Kamer*, a specialised military chamber located within the Rechtbank Gelderland, or District Court of Gelderland, as part of the civilian judiciary. This reform was driven by the recognition that a rigid separation between military and civilian courts may create risks of impunity and weaken accountability for soldiers who commit criminal acts against civilians (Trianto et al., 2025).

Under the Dutch system, cases involving military personnel are examined by civilian judges assisted by military members serving as assessor judges, who do not hold full voting rights in the decision-making process. This institutional design reduces the risk of conflict of interest inherent in systems where military judges are active soldiers operating within the chain of command. For civilian victims, this system provides assurance that cases involving soldiers as perpetrators will be examined by an independent and transparent judicial forum subject to the accountability standards of the civilian judiciary.

The relevance of this comparative analysis for Indonesia lies in two fundamental points. First, both Australia and the Netherlands have addressed the issue of military–civilian court jurisdiction through clear norms and operational mechanisms. Such clarity remains absent in Indonesia because Article 65 of the TNI Law has not become operative. Second, both jurisdictions place the protection of civilian victims as a value that cannot be subordinated to institutional military privilege. This approach reflects consistent adherence to the principle of equality before the law, under which the status of the perpetrator as a soldier does not diminish the victim's right to a fair and impartial tribunal.

Indonesia already possesses constitutional and normative foundations that are sufficiently strong to move in the same direction, as reflected in the mandate of Article 65 of the TNI Law. However, as long as the condition precedent established by Article 74 of the TNI Law is not fulfilled through an amendment to the Military Courts Law, Indonesia will continue to lag behind the standards of civilian victim protection that have been developed in these comparative jurisdictions. The systems of Australia and the Netherlands may therefore serve as normative references and comparative arguments reinforcing the urgency of reforming military court jurisdiction in Indonesia as a prerequisite for realising legal certainty and human rights protection for civilian victims.

CONCLUSION

The normative vacuum in the implementation of Article 65 in conjunction with Article 74 of Law Number 34 of 2004 concerning the Indonesian National Armed Forces has created persistent jurisdictional uncertainty for civilian victims of criminal acts committed by TNI soldiers. For more than two decades, the progressive mandate of Article 65 of the TNI Law has remained inoperative because the amendment to the Military Courts Law, as the condition precedent for its implementation, has never been enacted. As a consequence, civilian victims have not received the guarantee of a free and impartial tribunal as required by the principles of due process of law and equality before the law. The comparative analysis of Australia and the Netherlands demonstrates that the resolution of military–civilian court jurisdiction through clear and operational norms is a prerequisite for the dignified protection of civilian victims. Accordingly, the amendment of Law Number 31 of 1997 concerning Military Courts is a reform measure that can no longer be deferred if Indonesia is to realise legal certainty and human rights protection for civilian victims within the framework of a state governed by the rule of law.

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