



FROM STATUS-BASED TO OFFENSE-BASED JURISDICTION: REFORMULATING MILITARY COURT COMPETENCE OVER ASSAULT AND OTHER ORDINARY CRIMES AGAINST CIVILIANS IN INDONESIA

Fadil Albani¹

¹ Faculty of Law, Universitas Tadulako, Palu

Email: ¹fadilalbani25@gmail.com

Abstract

This article examines the jurisdiction of Indonesian military courts over ordinary crimes committed by soldiers against civilians. The legal problem is not the absence of a formal rule, because Article 74 of Law Number 34 of 2004 keeps Law Number 31 of 1997 applicable until a new Military Courts Law is enacted. The problem lies in the prolonged transitional regime that has preserved a status-based jurisdictional model despite the reform-oriented direction of Article 65 paragraph (2) of the Armed Forces Law. Using normative juridical research with statutory and conceptual approaches, this article analyzes whether ordinary crimes such as assault or collective violence against civilians should remain within military court competence. The article argues that jurisdiction should not be determined solely by the perpetrator's military status, but by the nature of the offense, the legal interest harmed, the victim's status, and the connection between the offense and military duty. The main contribution of this article is an offense-based and interest-based model of jurisdiction. Under this model, military courts remain competent over pure military offenses and service-related crimes, while ordinary crimes committed by soldiers against civilians should be adjudicated by general courts. Such reform is necessary to strengthen legal certainty, equality before the law, due process, civilian supremacy, and public accountability.

Keywords: Civilian Victims; Indonesian National Armed Forces; Military Court; Offense-Based Jurisdiction; Ordinary Crime.

Abstrak

Artikel ini mengkaji yurisdiksi peradilan militer Indonesia terhadap tindak pidana umum yang dilakukan oleh prajurit terhadap warga sipil. Permasalahan hukumnya bukan terletak pada ketiadaan aturan formal, karena Pasal 74 Undang-Undang Nomor 34 Tahun 2004 tetap mempertahankan keberlakuan Undang-Undang Nomor 31 Tahun 1997 sampai dibentuknya Undang-Undang Peradilan Militer yang baru. Permasalahan justru terletak pada rezim transisi yang berkepanjangan, yang mempertahankan model yurisdiksi berbasis status meskipun Pasal 65 ayat (2) Undang-Undang TNI mengarah pada reformasi sistem peradilan militer. Dengan menggunakan penelitian yuridis normatif melalui pendekatan perundang-undangan dan pendekatan konseptual, artikel ini menganalisis apakah tindak pidana umum, seperti penganiayaan atau kekerasan bersama terhadap warga sipil, seharusnya tetap berada dalam kompetensi peradilan militer. Artikel ini berpendapat bahwa penentuan yurisdiksi tidak seharusnya didasarkan semata-mata pada status militer pelaku, melainkan pada sifat tindak pidana, kepentingan hukum yang dirugikan, status korban, serta keterkaitan antara tindak pidana tersebut dengan tugas kedinasan militer. Kontribusi utama artikel ini adalah menawarkan model yurisdiksi yang berbasis pada jenis tindak pidana (*offense-based*) dan kepentingan hukum yang dilindungi (*interest-based*). Dalam model ini, peradilan militer tetap berwenang mengadili tindak pidana militer murni dan tindak pidana yang berkaitan dengan pelaksanaan tugas kedinasan, sedangkan tindak pidana umum yang dilakukan oleh prajurit terhadap warga sipil seharusnya diperiksa dan diadili oleh peradilan umum. Reformasi tersebut diperlukan untuk memperkuat kepastian hukum, persamaan di hadapan hukum, *due process of law*, supremasi sipil, dan akuntabilitas publik.

Kata Kunci: Peradilan Militer; Tentara Nasional Indonesia; Tindak Pidana Umum; Yurisdiksi Berbasis Tindak Pidana.

I. INTRODUCTION

Indonesia is constitutionally established as a state based on law under Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This principle requires that the exercise of public power, including criminal jurisdiction, be limited by legal certainty, equality before the law, and judicial accountability, as reflected in Article 27 paragraph (1) and Article 28D paragraph (1). The Constitution also recognizes military courts as one of the

judicial environments under the Supreme Court under Article 24 paragraph (2). However, constitutional recognition of military courts does not automatically answer the question of how far their jurisdiction may extend, especially when the offense committed by a soldier harms a civilian rather than a military legal interest.

The central issue of this article is the proper forum for ordinary crimes committed by members of the Indonesian National Armed Forces against civilians. This issue should be distinguished from the constitutional existence of military courts. Military courts may remain necessary for offenses that directly affect military discipline, command, operational readiness, or defense functions. The more difficult question is whether the same special forum should also adjudicate ordinary crimes, such as assault, collective violence, theft, fraud, or homicide, when the protected legal interest is public and civilian in character.

Indonesian positive law contains two different jurisdictional orientations. Article 9 of Law Number 31 of 1997 concerning Military Courts still adopts a status-based approach by giving military courts competence over crimes committed by persons who, at the time of the offense, were soldiers or persons equated with soldiers. Article 65 paragraph (2) of Law Number 34 of 2004 concerning the Indonesian National Armed Forces, in contrast, adopts an offense-based direction by providing that soldiers are subject to military courts for military criminal offenses and to general courts for ordinary criminal offenses. This later rule reflects the post-Reformasi policy of limiting military jurisdiction to matters that are genuinely military in nature.

The statutory difficulty arises from Article 74 of Law Number 34 of 2004. That provision states that Article 65 becomes effective when a new Military Courts Law is enacted, and that until such law exists the 1997 Military Courts Law remains applicable. Therefore, this article does not argue that the current operative rule is formally absent. Rather, it argues that the open-ended transitional clause has created a prolonged transitional regime. The formal rule remains clear in one sense, but the legal system has not completed the reform direction already recognized in the later statute and in the broader post-Reformasi policy of separating military and civilian accountability, as reflected in TAP MPR Number VII/MPR/2000, Article 3 paragraph (4)(a).

This framing is important because it avoids treating the issue as a simple clash between two statutes. The problem is more specific: the older status-based model remains operative because the new military court legislation has not been enacted, while the later Armed Forces Law already sets a different normative direction. The result is a gap between law in operation and law in aspiration. In cases involving civilian victims, that gap may affect access to justice, public confidence, equality before the law, and the appearance of impartiality. Assault and collective violence against civilians are used in this article as representative examples of ordinary crimes, not as an isolated or separate subject detached from the title. These offenses show the practical consequences of status-based jurisdiction because the perpetrator may be a soldier, but the victim, protected legal interest, and public harm are civilian. If the same incident involves both soldiers and civilians, separate proceedings may also raise questions about consistency in fact-finding, sentencing, and public accountability.

Previous discussions of Indonesian military justice have often focused on the constitutional position of military courts, the history of security sector reform, or the general problem of connected jurisdiction. This article contributes a narrower analytical model. It proposes that jurisdiction should be determined through two combined tests: an offense-based approach, which asks whether the conduct is a military offense or an ordinary offense, and an interest-based approach, which asks whether the dominant legal interest harmed is military or civilian. This model preserves military courts for military necessity while preventing military status from becoming an automatic procedural privilege.

This article addresses two research questions. First, how is the jurisdiction of military courts over ordinary crimes committed by soldiers currently regulated under Indonesian law and second, should ordinary crimes committed by soldiers against civilians, particularly assault or collective violence, remain within military court jurisdiction or fall under the competence of the general courts.

I. RESULT AND DISCUSSION

1. Current Positive Law: Status-Based Jurisdiction and the Prolonged Transitional Regime

The first research question concerns the current regulation of military court jurisdiction over ordinary crimes. Under Law Number 31 of 1997, military court jurisdiction is primarily attached to the status of the accused. Article 9 gives military courts authority to examine and decide crimes committed by soldiers or persons legally equated with soldiers. The provision does not make the nature of the offense the decisive criterion. Consequently, both military offenses and ordinary crimes committed by active soldiers may be processed through the military justice system.

This status-based model can be understood historically because the 1997 law was enacted before the consolidation of post-Reformasi constitutional reform. The role of the armed forces in the state structure was broader, and the legal system had not yet fully separated defense, security, and civilian criminal accountability. After Reformasi, however, the constitutional environment changed. Civilian supremacy, independent judicial power, equality before the law, and the separation between military discipline and public criminal accountability became more central to the legal order.¹

Law Number 34 of 2004 introduced a different logic. Article 65 paragraph (2) distinguishes between military criminal offenses and ordinary criminal offenses. Soldiers remain subject to military courts for military criminal offense, but are subject to general courts for ordinary criminal offenses. This provision is important because it moves the basis of jurisdiction away from the personal status of the perpetrator and toward the nature of the offense. The rule is consistent with the post-Reformasi policy that soldiers are members of the armed forces but also citizens who remain accountable under ordinary criminal law when they commit ordinary crimes.

Article 74 of Law Number 34 of 2004, however, postpones the effectiveness of Article 65 until the enactment of a new Military Courts Law. In the meantime, the 1997 Military Courts Law remains applicable. The consequence is not a total absence of a forum, but an indefinite continuation of the old forum. A transitional provision that was supposed to bridge an old regime and a new regime has become the legal basis for maintaining the old jurisdictional model for many years. In legislative theory, a transition clause should be temporary, measurable, and directed toward implementation, not a permanent exception to reform.²

The prolonged transition creates a normative tension. On one side, law enforcement actors may rely on Article 9 of the 1997 law as the operative rule. On the other side, Article 65 paragraph (2) of the 2004 law expresses the legislative policy that ordinary crimes by soldiers should be tried by general courts. This tension affects legal certainty because the legal system

¹ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2005), hlm. 12.

² Maria Farida Indrati S., *Ilmu Perundang-undangan 1: Jenis, Fungsi, dan Materi Muatan* (Yogyakarta: Kanisius, 2007), hlm. 41-45.

recognizes one reform direction but continues to apply a different operative model. It also affects equality because forum selection may depend on the institutional identity of the accused rather than the legal nature of the offense.

The problem should therefore be formulated as a problem of incomplete legislative harmonization. The military court remains constitutionally valid, but its competence must be justified by the special character of the matter being tried. Special courts are exceptions to the ordinary jurisdiction of general courts. Their authority must be interpreted restrictively and proportionately so that specialization does not become institutional privilege.³ In ordinary crimes against civilians, the reason for special military jurisdiction becomes weaker because the case concerns public criminal law and civilian legal interests.

From the perspective of judicial power, the issue is also connected to public confidence. Law Number 48 of 2009 concerning Judicial Power emphasizes independent judicial power and recognizes several judicial environments, including military courts, particularly under Articles 1 and 18. Independence, however, is not only a formal institutional label. In cases involving civilian victims, the chosen forum must be able to demonstrate openness, impartiality, and accountability. A forum that appears closely connected to the institutional identity of the accused may generate doubts even when individual judges act lawfully.

Thus, the answer to the first research question is that Indonesian law currently operates under the 1997 status-based model because Article 74 of the 2004 Armed Forces Law keeps it applicable until a new Military Courts Law is enacted. At the same time, the later statute has already established an offense-based reform direction. This duality explains the legal problem addressed in this article: not a simple uncertainty about which rule presently applies, but an unresolved transition that prevents the legal system from implementing the post-Reformasi limitation of military jurisdiction.

2. Ordinary Crimes against Civilians and The Limits of Military Jurisdiction

The second research question requires classification of the offense. Military criminal law does not exist merely because the perpetrator is a soldier. It exists because certain conduct threatens military discipline, obedience, command, readiness, or defense functions. Pure military offenses, such as desertion or insubordination, can only be committed by soldiers or are meaningful only within a military structure. By contrast, ordinary crimes such as assault, collective violence, theft, fraud, and homicide are crimes governed by general criminal law and may be committed by any person.⁴

The Military Criminal Code itself recognizes the relevance of general criminal law to military subjects. The fact that a soldier is bound by military discipline does not transform every wrongful act into a military offense. If military status alone were sufficient, the distinction between military offenses and ordinary offenses would collapse. Article 65 paragraph (2) of the Armed Forces Law would lose practical meaning because every ordinary crime committed by a soldier could be reclassified as military simply because the perpetrator is a soldier.

Assault or collective violence against civilians illustrates the point. The protected legal interests are bodily integrity, life, dignity, public order, and civilian security. These are general legal interests protected by the Criminal Code for all citizens. The fact that the perpetrator is a soldier may aggravate the social seriousness of the act, because soldiers possess training,

³ Bagir Manan, *Teori dan Politik Konstitusi* (Yogyakarta: FH UII Press, 2004), hlm. 87.

⁴ S.R. Sianturi, *Hukum Pidana Militer di Indonesia* (Jakarta: Alumni AHM-PTHM, 1985), hlm. 19.

discipline, and institutional authority. However, that fact does not automatically change the legal character of the offense. Unless the act is directly related to military duty, military operation, command discipline, or defense function, the dominant legal interest remains civilian.

Competence theory supports this conclusion. A court's competence should not be reduced to the personal identity of the accused. It must also consider subject matter, legal interest, context, time, and place. In a case where a soldier assaults a civilian outside military duty, the subject element points to military status, but the matter element points to ordinary criminal law. The legal relationship is not an internal military relationship between commander and subordinate, but a public legal relationship between the accused and a civilian citizen. The general court is therefore the more appropriate forum.⁵

This interpretation is consistent with equality before the law and due process. Equality does not prohibit all differentiation, but differentiation must rest on objective and constitutionally justifiable grounds. Military courts can be justified when the matter is genuinely military. The justification becomes weaker when the case is an ordinary crime against a civilian. A jurisdictional model that prioritizes status over the nature of the offense risks creating the impression that soldiers receive a different path of criminal accountability for the same type of harm suffered by civilian victims.⁶

The forum question is also a victim-protection question. Civilian victims and their families need accessible information, open proceedings, and assurance that the case is treated as a public criminal matter. Even if military courts are formally part of the national judicial system, their historical and institutional proximity to military command may affect public perception. Victim protection requires not only a legal process, but a forum that can be understood and trusted by the public.⁷

Connected cases further demonstrate the limits of status-based jurisdiction. When soldiers and civilians are involved in the same incident, separate proceedings may produce fragmented fact-finding and inconsistent sentencing. One court may construct the chronology differently from another. The public may then perceive disparity as an effect of institutional forum rather than evidence or individual culpability. For ordinary crimes against civilians, the general court should become the default forum so that the whole event can be examined in one public criminal process.⁸

This does not mean that military discipline becomes irrelevant. A soldier tried and convicted in a general court may still face internal disciplinary, administrative, or service-related consequences. These forms of accountability protect different legal interests. Criminal adjudication protects public order and civilian rights, while military discipline protects institutional integrity and operational readiness. Separating the two prevents internal discipline from replacing public criminal accountability.⁹

⁵ J.H.A. Logemann, *Het Staatsrecht van Indonesie*, as discussed in Abu Daud Busro and Abu Bakar Busro, *Asas-Asas Hukum Tata Negara* (Jakarta: Ghalia Indonesia, 1991), hlm. 28-29.

⁶ M. Nur Sholikin, "Peradilan Militer dan Prinsip Equality Before The Law dalam Negara Hukum Indonesia," *Jurnal Konstitusi*, Vol. 17 No. 3 (2020).

⁷ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987), hlm. 38.

⁸ Budi Pramono and Agung Pramono, "Problematics of the Legal Settlement of Connective Crimes in Indonesia," *Hang Tuah Law Journal*, Vol. 8 No. 2 (2024).

⁹ Moch. Faisal Salam, *Hukum Acara Pidana Militer di Indonesia* (Bandung: Mandar Maju, 2002), hlm. 14.

International fair-trial standards reinforce the need for caution in using special or military courts. International law does not prohibit military courts in all circumstances, but it requires that special courts comply with independence, impartiality, and equality before courts and tribunals. The relevance of this standard is not to abolish military courts, but to ensure that their jurisdiction does not extend beyond military necessity, especially where civilian victims and ordinary criminal law are involved.¹⁰

Therefore, ordinary crimes committed by soldiers against civilians should not automatically fall within military court competence. The decisive criteria should be the nature of the offense, the legal interest harmed, the victim's status, and the relation between the act and military duty. Where the dominant legal interest is civilian and the act is not service-related, general courts should have competence.

3. Reformulating Jurisdiction Through an Offense-Based and Interest-Based Approach

The appropriate solution is legislative reform. Interpretation alone cannot fully solve the problem because Article 74 keeps the old Military Courts Law operative until a new law is enacted. Reform should therefore amend the Military Courts Law and remove the open-ended transitional dependency. The new rule should expressly state that military courts have competence over pure military offenses and offenses directly related to military duty, military operations, discipline, command, or defense functions. Ordinary crimes committed by soldiers against civilians should be examined, tried, and decided by general courts.

The reform should be built on two related approaches. The offense-based approach asks whether the conduct is military or ordinary in legal character. The interest-based approach asks which legal interest is dominantly harmed. If the offense is ordinary and the dominant interest is civilian, the case should be placed in the general court even though the accused is a soldier. If the offense is military or the dominant interest is military discipline, command, or operation, the military court may retain competence.

This model gives concrete meaning to competence theory. It recognizes that the identity of the accused is relevant, but not decisive. Status may trigger coordination with military authorities and may justify disciplinary consequences, but it should not automatically determine the criminal forum. The forum should be determined by a combination of the offense, the legal interest, the victim, and the service connection. This test makes Article 65 paragraph (2) meaningful while preserving military courts for matters that require military specialization.

The reform should also define categories of offenses. A pure military offense is conduct that can only be committed by a soldier or that directly violates military discipline, such as desertion or insubordination. A service-related offense is conduct connected to official military duty, military operations, defense security, command structure, or the use of military authority. An ordinary offense is conduct regulated by general criminal law, harming public or civilian interests, and lacking a direct service connection. This classification would give investigators, prosecutors, judges, victims, and soldiers predictable criteria for forum selection.

Connected cases should receive special regulation. Where soldiers and civilians participate in the same ordinary crime and the victim is a civilian, the general court should have priority jurisdiction. An exception may be allowed only where a reasoned jurisdictional determination shows that the dominant legal interest is military. Such a rule would reduce fragmented

¹⁰ United Nations Human Rights Committee, General Comment No. 32: Article 14, Right to Equality before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32, 23 August 2007, paragraph 22.

proceedings and would permit one public court to assess the chronology, the role of each defendant, causation, and the harm suffered by the victim.

Institutional coordination must accompany the reform. Military police may secure a soldier suspected of committing an ordinary crime, but the case file, suspect, and evidence should be transferred to civilian investigators within a clear statutory deadline when the victim is civilian and the offense is ordinary. Prosecution should follow the competent forum: ordinary crimes in general courts should be prosecuted by public prosecutors, while military prosecutors may provide institutional information when necessary. These procedural rules would prevent reform from being blocked at the investigation stage.¹¹

Victim access should also be expressly regulated. Civilian victims should receive information about the competent forum, investigation progress, transfer of files, prosecution authority, hearing schedule, and available legal remedies. Jurisdictional complexity should not make victims passive outsiders. A reform that changes only the name of the competent court without improving victim access would not fully answer the rule-of-law concern.

Comparative and international standards support this narrower model of military jurisdiction. In democratic legal systems, military justice is generally justified by military necessity, not by institutional privilege. Military courts may be retained for battlefield offenses, disobedience, desertion, or breaches of military discipline, while ordinary crimes against civilians should remain within ordinary public criminal justice. This comparative point is used here only as supporting reasoning: Indonesia's own reform instruments already point in the same direction through TAP MPR Number VII/MPR/2000 and Article 65 paragraph (2) of the Armed Forces Law.¹²

The open-ended transition in Article 74 should be replaced with a definitive transition rule. The new law should set an effective date, regulate pending cases, and prevent indefinite postponement. Cases already at trial may continue in the existing forum for procedural economy, while new cases after the effective date should follow the reformed jurisdictional test. Clear transitional rules would avoid repeating the current problem, where a transitional clause has outlived its function.

The proposed reform also strengthens military professionalism. A professional military institution is not protected by keeping all soldiers within an internal forum. It is strengthened when soldiers remain accountable to ordinary criminal law for ordinary crimes against civilians and when military discipline operates as a separate institutional consequence. Civilian supremacy is therefore not a rejection of military courts, but a constitutional principle that limits special jurisdiction to military necessity.¹³

From the perspective of legal system theory, the reform must address legal substance, legal structure, and legal culture. The substance must harmonize the Military Courts Law and the Armed Forces Law. The structure must clearly allocate investigative, prosecutorial, and judicial authority. The culture must move away from treating ordinary crimes by soldiers as

¹¹ R. Pebrianto et al., "Kebijakan Hukum Pidana Tentang Pemeriksaan Prajurit TNI Pelaku Tindak Pidana Umum," *Jurnal Seikat* (2024), hlm. 177-178.

¹² International Commission of Jurists, *Military Jurisdiction and International Law: Military Courts and Gross Human Rights Violations* (Geneva: ICJ, 2004).

¹³ Ria Casmi Arrsa, "Supremasi Sipil dan Reformasi Peradilan Militer di Indonesia," *Jurnal Yudisial*, Vol. 13 No. 1 (2020), hlm. 76.

matters of corps reputation and toward treating civilian harm as public harm. Reform will be effective only if all three elements change together.¹⁴

The reformulation proposed in this article can therefore be summarized in one normative formula: military courts are competent over military criminal offenses and offenses directly connected to military duty or military interests; general courts are competent over ordinary criminal offenses committed by soldiers against civilians; and in connected cases involving soldiers, civilians, and civilian victims, the general court is the default forum unless a reasoned decision establishes that the dominant legal interest is military. This formula provides legal certainty while respecting the constitutional existence of military courts.

4. Comparative Models: Functional Lessons for Indonesia

The comparative analysis is structured around four questions: whether military criminal courts exist in peacetime; whether ordinary crimes by soldiers may be tried outside military courts; whether victims or civilian prosecutors have a role in forum selection; and what lesson is useful for Indonesia. The comparison does not suggest that Indonesia must transplant a foreign system. It uses foreign models as a mirror to sharpen the domestic reform formula.¹⁵

Jurisdiction	Basic model	Treatment of ordinary crimes	Lesson for Indonesia
Germany	No standing military criminal courts operate in peacetime. Soldiers are generally tried before ordinary courts, including for military offenses.	Criminal jurisdiction is civilian; military discipline may proceed separately.	Status need not automatically determine a special criminal forum.
Canada	Court martial jurisdiction exists, but the National Defence Act excludes some serious offenses committed in Canada, including murder and manslaughter.	Serious ordinary offenses may be carved out by statute.	Indonesia can create offense-based exclusions for ordinary crimes against civilians.
United Kingdom	Court Martial has broad service jurisdiction, while civilian and service systems may have concurrent jurisdiction.	Civilian and service prosecutors coordinate forum choice, with victim views considered in some cases.	Concurrent jurisdiction needs transparent prosecutorial coordination and victim participation.
Netherlands	Military justice is embedded in the civil justice system through a special military chamber.	Civilian public prosecution remains central; two of three judges are civilian.	Military expertise can be retained inside a civilian judicial structure.

Germany offers the strongest civilian-court model. The German Basic Law permits federal military criminal courts for the armed forces, but Germany has not established such courts in peacetime. Criminal cases involving Bundeswehr soldiers are therefore tried before ordinary courts, while serious disciplinary matters may proceed before disciplinary and

¹⁴ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), hlm. 13-15.

¹⁵ Mark Vashakmadze, *Understanding Military Justice: A Practice Note* (Geneva: DCAF, 2018), hlm. 13; International Commission of Jurists, *Military Jurisdiction and International Law: Military Courts and Gross Human Rights Violations* (Geneva: ICJ, 2004).

complaints courts. This separation shows that military professionalism does not require a separate criminal forum for every offense by a soldier.¹⁶

Canada offers a category-exclusion model. Section 70 of the National Defence Act removes court martial jurisdiction over certain serious offenses committed in Canada, including murder and manslaughter. Although Canada still has a robust military justice system, the exclusion demonstrates that ordinary criminal seriousness can justify civilian court priority.¹⁷

The United Kingdom offers a concurrent-jurisdiction model. The Court Martial has broad jurisdiction, but the Crown Prosecution Service and the Service Prosecuting Authority coordinate forum decisions. The current prosecutorial protocol requires attention to fair and efficient justice and, in certain circumstances, to the views of victims. This model is useful for Indonesia because it turns forum selection into a reasoned, reviewable prosecutorial decision rather than a mechanical consequence of status.¹⁸

The Netherlands offers a civilian-embedded military chamber model. Military criminal matters are handled within the civilian justice structure, with civilian prosecutors and a judicial panel containing two civilian judges and one military member. This model preserves military expertise but reduces the perception that the forum is owned by the military institution itself.¹⁹

The comparative lesson is clear. Democratic systems do not use one single design, but they tend to avoid an unlimited status-based model. They either rely on ordinary courts, create offense-based exclusions, require prosecutorial coordination, include victim consideration, or embed military expertise within civilian judicial structures. Indonesia's reform should combine these techniques in a way that fits Article 65 paragraph (2) of the TNI Law and the constitutional existence of military courts.

Conclusion

The current regulation of military court jurisdiction over ordinary crimes in Indonesia is shaped by an unresolved transition. Law Number 31 of 1997 still operates through a status-based model, so active soldiers may be brought before military courts even for ordinary crimes. Law Number 34 of 2004 introduced an offense-based direction by distinguishing military criminal offenses from ordinary criminal offenses, but Article 74 postponed the implementation of that direction until the enactment of a new Military Courts Law. The legal problem is therefore not the absence of a formal operative rule, but the prolonged transitional regime that prevents the reform direction of Article 65 paragraph (2) from being fully implemented.

Ordinary crimes committed by soldiers against civilians, including assault or collective violence, should not automatically fall within military court competence. Such offenses protect legal interests such as bodily integrity, life, public order, and civilian rights. Military status may be relevant to discipline or administrative consequences, but it should not be the sole basis for determining the criminal forum. From the perspective of competence theory, equality

¹⁶ United Nations Peacekeeping, "The Netherlands," Member State Fact Sheet, 2016; Bas van Hoek, "Military Criminal Justice in the Netherlands: The Civil Swing of the Military Judicial Order," in Alison Duxbury and Matthew Groves, eds., *Military Justice in the Modern Age* (Cambridge: Cambridge University Press, 2016).

¹⁷ Canada, National Defence Act, R.S.C. 1985, c. N-5, section 70.

¹⁸ Crown Prosecution Service, "Victims of crimes committed by armed forces personnel to have say in justice," 23 February 2023; Courts and Tribunals Judiciary, "Military Jurisdiction," United Kingdom Judiciary.

¹⁹ German Bundestag Scientific Services, *Legal Regulation and Jurisdiction of Military Courts in Germany*, WD 2 - 3000 - 040/23, 2023

before the law, due process, and civilian supremacy, the proper forum should be determined by the nature of the offense, the dominant legal interest harmed, the victim's status, and the connection between the act and military duty.

The main contribution of this article is the formulation of an offense-based and interest-based approach to military court jurisdiction. This approach preserves military courts for pure military offenses and service-related crimes, while placing ordinary crimes against civilians within the general courts. Legislative reform should amend the Military Courts Law, replace the open-ended transition in Article 74, regulate connected cases, establish coordination between military and civilian law enforcement authorities, and guarantee victim access.

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