

THE AUTHORITY OF MILITARY COURTS IN PROSECUTING COMMON CRIMES COMMITTED BY ARMED FORCES PERSONNEL: A COMPARATIVE LEGAL STUDY OF INDONESIA, THE UNITED STATES, AND THE NETHERLANDS

DANOFAN TRIANTO¹

Jonaedi Efendi

Yahman

¹Faculty Of Law Universitas Bhayangkara Surabaya, Indonesia

The E-mail Author: azzadante1@gmail.com

Abstract:

This article examines the legal authority of military courts in Indonesia to prosecute common crimes committed by members of the armed forces, using a comparative legal analysis with the United States and the Netherlands. While Indonesia retains broad military jurisdiction, including over offenses not inherently related to military duties, democratic jurisdictions like the U.S. and the Netherlands have implemented robust safeguards or jurisdictional limits to ensure judicial accountability and human rights compliance. Drawing upon legal statutes, human rights reports, and precedent cases, this study finds that the Indonesian system risks undermining due process and public trust due to limited transparency and the absence of civilian oversight. The United States, through the Uniform Code of Military Justice (UCMJ), embeds multiple layers of civilian control, while the Netherlands has fully integrated military justice into the civilian judiciary since 1991. The article concludes that Indonesia should restrict military jurisdiction to strictly service-related offenses and transfer all common crime cases involving military personnel to civilian courts. Such reform would align national practices with international human rights obligations and enhance public confidence in the justice system.

Keywords: : military court, jurisdiction, Indonesia, United States, Netherlands, human rights, civilian oversight, legal reform.

INTRODUCTION

In modern legal discourse, the intersection of military and civilian justice systems has been increasingly scrutinized for its implications on democratic governance and human rights compliance. The jurisdictional boundary between military and civilian courts is not merely a technicality but a cornerstone of ensuring justice, especially when armed forces personnel are involved in common crimes. Military courts are traditionally established to maintain discipline within the ranks, while civilian courts uphold the broader principles of due process and public accountability. When military courts adjudicate common crimes, tensions often arise between internal disciplinary goals and external expectations for impartial justice.

Indonesia presents a particularly striking case. The Indonesian military justice system permits military courts to try active-duty personnel for both military and civilian crimes, including murder, theft, and sexual assault. This practice, rooted in the dual judicial system established under Law No. 31 of 1997, has come under increasing domestic and international criticism. Critics argue that such an arrangement fosters a culture of impunity, lacks transparency, and is inconsistent with international human rights standards ¹. The debate over whether military courts should try common crimes is not unique to Indonesia but is part of a global conversation on civil-military relations and justice.

The urgency of addressing this jurisdictional overlap is underscored by repeated incidents involving military personnel and the absence of meaningful civilian oversight in their prosecution. In several documented cases, Indonesian soldiers convicted of serious offenses received disproportionately lenient sentences compared to civilians convicted of similar crimes. This dualism of legal accountability erodes public trust in the judiciary and raises questions about the uniform application of law ².

¹ Amnesty International, "Indonesia: 'Don't Bother, Just Let Him Die' : Killing with Impunity in Papua."

² Human Rights Watch, "Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities."

This article aims to examine the authority of military courts in prosecuting common crimes committed by armed forces personnel in Indonesia and compare it with the legal frameworks in the United States and the Netherlands. These two countries were selected for their established democratic traditions, robust legal institutions, and contrasting approaches to military justice. While the U.S. maintains a distinct military justice system under the Uniform Code of Military Justice (UCMJ), the Netherlands has significantly curtailed military jurisdiction, integrating military cases into the civilian justice system.

The comparative focus of this study is intended to draw normative and structural lessons for Indonesia's ongoing judicial reform. Through this comparative lens, the article seeks to assess the compatibility of Indonesia's current system with international standards, such as those enshrined in the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to a fair and public hearing by a competent, independent, and impartial tribunal.

The research is guided by three central questions: (1) What is the legal basis for the jurisdiction of military courts in Indonesia, particularly concerning common crimes? (2) How do the United States and the Netherlands approach similar cases involving their armed forces personnel? (3) What implications can be drawn from these comparative models for the reform of Indonesia's military justice system.

This study contributes to the literature by offering a legal and normative evaluation of military court jurisdiction in Indonesia, contextualized within global best practices. Unlike previous studies that focus narrowly on legal doctrines, this article emphasizes systemic implications, including human rights, public accountability, and civil-military relations. In doing so, it hopes to enrich the discourse on military justice reform in transitional democracies.

The structure of this article is as follows. After presenting a literature review and theoretical framework, the article details the legal status of military courts in Indonesia, followed by case studies from the United States and the Netherlands. It concludes with a comparative analysis and a set of policy recommendations for Indonesia. The methodological approach combines doctrinal analysis with comparative legal reasoning, drawing on statutory texts, case law, and reports from reputable human rights organizations.

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The military justice system has long been a subject of scholarly debate, particularly regarding its legitimacy, transparency, and compatibility with the principles of rule of law. Legal scholars have historically differentiated between military justice as an internal disciplinary mechanism and civilian justice as a public legal institution designed to protect individual rights and uphold social order³. In this dichotomy, the adjudication of common crimes—those unrelated to military service—by military tribunals represents a jurisdictional anomaly that risks undermining justice.

One central theoretical lens for analyzing military justice is the concept of due process of law, rooted in both domestic constitutional principles and international human rights norms. The ICCPR, to which Indonesia is a state party, enshrines the right to a fair and public hearing by a competent, independent, and impartial tribunal (Article 14). Many legal commentators argue that military courts inherently lack the structural independence necessary to meet these criteria, particularly in peacetime and in cases involving civilian victims⁴.

A second relevant concept is judicial independence, which is essential for ensuring impartial adjudication. In military courts, the potential for command influence and lack of security of tenure for judges raise concerns about their ability to rule objectively⁵. These structural deficiencies are often exacerbated in systems where the executive branch, especially the Ministry of Defense or Armed Forces leadership, exercises de facto control over judicial appointments and court procedures.

³ Fidell, "Military Justice: A Very Short Introduction."

⁴ Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*.

⁵ Oette, *Criminal Justice Reform and Human Rights in Africa: The Role of the African Commission on Human and Peoples' Rights*.

Empirical studies have shown that military courts tend to deliver more lenient sentences in cases involving abuses against civilians, thereby diminishing public confidence in the judiciary⁶. This leniency often reflects institutional biases, prioritizing cohesion and morale over justice and accountability. The problem is compounded in jurisdictions where oversight by civilian institutions—such as parliamentary committees, independent human rights bodies, or ombudsmen—is weak or absent.

Comparative legal scholarship has illuminated diverse approaches to military justice. For instance, while the U.S. retains a separate military justice system, it incorporates multiple layers of civilian oversight, including the possibility of appellate review by civilian judges. In contrast, European countries such as Germany and the Netherlands have curtailed military jurisdiction significantly, reflecting a broader commitment to civilian supremacy over the armed forces⁷.

Past literature has also emphasized the political dimension of military justice. In transitional democracies, where the military historically played a dominant political role, reforming the military justice system is often part of broader efforts to consolidate civilian rule and democratize state institutions⁸. In Indonesia, these reforms have been sporadic and largely superficial, with the military retaining significant autonomy over internal disciplinary mechanisms.

The need for reform is further underscored by recurring patterns of human rights violations committed by military personnel, including extrajudicial killings, torture, and sexual violence. Where such acts are adjudicated within the military system, the risk of impunity remains high, particularly when trials lack public access, victim participation, or the possibility of independent review⁹.

In sum, the literature suggests that limiting the jurisdiction of military courts to service-related offenses during active duty is a best practice in democratic legal systems. This principle not only enhances legal accountability but also protects the rights of both victims and accused persons. It is within this normative and empirical framework that this article situates its comparative analysis of Indonesia, the United States, and the Netherlands.

METHODOLOGY

This study adopts a normative-comparative legal research methodology, which is particularly suited for evaluating legal norms across jurisdictions and assessing their alignment with human rights standards. A normative approach is employed to analyze the substance of existing legal rules, while the comparative element allows for cross-national evaluation of legal systems. This combination provides both descriptive insight and normative critique, enabling the formulation of reform recommendations for Indonesia's military justice system.

Primary legal materials constitute the backbone of this research. These include the Indonesian Military Court Law¹⁰, the Indonesian Penal Code (KUHP), and the Indonesian Criminal Procedure Code (KUHAP). For the United States, this study analyzes the Uniform Code of Military Justice (UCMJ) and relevant case law such as *United States v. Calley*, while for the Netherlands, the research draws upon post-1991 military justice reforms and the Dutch Code of Military Criminal Law (*Wet Militair Strafrecht*). These sources are examined to determine the legal authority, procedural safeguards, and jurisdictional boundaries of military courts.

Secondary sources complement the primary materials and include academic journal articles, NGO reports (e.g., Amnesty International, Human Rights Watch), and policy papers from legal think tanks. These documents provide critical perspectives on how military justice functions in practice and the extent to which it complies with international standards such as those established by the International Covenant on Civil and Political Rights (ICCPR) and interpreted by the Human Rights Committee.

⁶ Amnesty International, "Indonesia: 'Don't Bother, Just Let Him Die': Killing with Impunity in Papua."

⁷ van Ommeren, "Military Justice Systems in Europe: A Comparative Overview. ."

⁸ Crouch, *Political Reform in Indonesia after Soeharto*.

⁹ Human Rights Watch, "Indonesia: Events of 2017."

¹⁰ Republic of Indonesia, Law No. 31 of 1997 on Military Courts.

The study also relies on case studies of actual prosecutions of military personnel for common crimes. In Indonesia, these include cases involving serious offenses—such as extrajudicial killings in Papua—that were adjudicated within military courts. In the United States, the case of Lieutenant William Calley and the My Lai Massacre serves as a reference point for examining accountability mechanisms in wartime. For the Netherlands, the research highlights how military jurisdiction has been curtailed and integrated into the civilian judiciary for general crimes.

The methodological approach includes legal interpretation and hermeneutics. Statutory interpretation focuses on identifying legislative intent, consistency with constitutional norms, and conformity with international human rights obligations. Hermeneutical analysis allows for an understanding of how legal norms operate within their broader social, political, and institutional contexts, particularly in transitional democracies like Indonesia.

To structure the comparative analysis, this research employs a functionalist methodology. This means comparing legal systems based on how they address similar problems—in this case, adjudicating common crimes committed by military personnel—rather than merely comparing formal legal texts. The aim is to identify best practices and potential lessons that could be adapted to the Indonesian context.

Another critical dimension is the normative critique. This involves evaluating whether existing legal arrangements meet the requirements of fairness, transparency, and independence as prescribed by human rights law. The normative critique is informed by standards set by international bodies such as the United Nations Human Rights Committee and the Inter-American Court of Human Rights, which have frequently ruled on the inadmissibility of military jurisdiction over civilian crimes.

Limitations of this study include the availability of case law and documentation, particularly in Indonesia, where military court proceedings are not always publicly accessible. Despite these constraints, the research provides a robust analytical framework through triangulation of legal texts, scholarly opinion, and practical case studies. This comprehensive approach ensures the validity and reliability of the findings, thereby offering substantive contributions to both legal scholarship and policy reform debates.

RESULTS

The Military Court System in Indonesia

The Indonesian military court system is regulated primarily by Law No. 31 of 1997 on Military Courts¹¹. This law outlines the jurisdiction of military courts to prosecute members of the Indonesian National Armed Forces (Tentara Nasional Indonesia, or TNI) for both military-specific offenses and common crimes. The dual jurisdictional capacity of military courts in Indonesia has long been a subject of contention, particularly regarding its implications for human rights and judicial transparency (Butt, 2014).

According to Law No. 31 of 1997, military courts are categorized into four levels: First-Level Military Courts, High Military Courts, the Military Court of Review, and the Military Supreme Court Chamber¹². These institutions are structurally separate from the civilian judiciary, and the judges are appointed from among military officers. This structural independence from the general judiciary raises concerns about impartiality and independence, especially in cases involving human rights violations¹³.

One of the most controversial aspects of Indonesia's military justice system is the continuing jurisdiction of military courts over common crimes. Military personnel accused of offenses such as murder, rape, or assault—ordinarily subject to civilian criminal courts—are frequently tried within the military court system. This has been justified by authorities on the basis of military discipline and the closed nature of military operations¹⁴.

¹¹ Republic of Indonesia.

¹² Republic of Indonesia.

¹³ Assegaf, "The Politics of Judicial Reform in Indonesia: A Socio-Legal Study of the Role of the Judicial Commission."

¹⁴ Institute for Criminal Justice Reform, "Model Alternatif Pembaruan Peradilan Militer: Integrasi, Koeksistensi, Atau Penghapusan?"

There are notable cases that highlight these jurisdictional issues. For instance, in the 2014 killing of civilians by TNI members in Papua, the perpetrators were tried in a military court, resulting in relatively light sentences compared to those typically imposed by civilian courts for similar crimes¹⁵. Such outcomes fuel public distrust and reinforce perceptions of impunity for military personnel.

The application of the Criminal Procedure Code (KUHP) in military courts is not straightforward. While military courts are expected to follow KUHP as the general procedural law, Law No. 31 of 1997 provides several deviations, such as closed trials and limits on public access to proceedings¹⁶. These practices further challenge the principles of transparency and accountability, which are essential components of due process¹⁷.

The lack of civilian oversight exacerbates the problem. Unlike some other jurisdictions, Indonesia does not have a clearly defined mechanism for civil authorities to supervise military court decisions. The military hierarchy often handles such matters internally, contributing to the opacity of the system and weakening the rule of law¹⁸.

Additionally, military judges in Indonesia are often active-duty officers, which poses a conflict of interest. These judges may be subordinate to the same command structure as the accused, thereby raising questions about judicial independence. In many democratic systems, judges must be insulated from such pressures to ensure fair adjudication¹⁹.

The reluctance to reform the military justice system can also be traced to political dynamics and civil-military relations. The Indonesian military continues to wield significant influence, both overt and covert, in political and bureaucratic arenas. This institutional legacy of the New Order regime still permeates aspects of legal reform, including the resistance to subject military personnel to civilian courts²⁰.

Indonesia has committed to various international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which stipulate fair trial rights and non-discrimination. The Human Rights Committee has clarified that military personnel should be tried in civilian courts for common crimes, yet Indonesia has not fully aligned its domestic laws with these international norms²¹.

The military court's retention of jurisdiction over ordinary crimes creates a legal dualism that undermines legal certainty. Citizens are subject to the jurisdiction of civilian courts, while military personnel can be shielded by military tribunals. This distinction contradicts the principle of equality before the law and contributes to a two-tier justice system that lacks public confidence²².

Efforts to reform military justice have been discussed since the early 2000s. A significant proposal came with the Draft Bill on the Military Justice System (RUU Peradilan Militer), which sought to transfer jurisdiction over ordinary crimes to civilian courts. However, this bill has stalled repeatedly in the legislature, largely due to resistance from the military establishment²³.

¹⁵ Komnas HAM, "Laporan Pemantauan Kasus Penembakan Oleh Aparat TNI Di Papua Tahun 2014."

¹⁶ Republic of Indonesia, Law No. 31 of 1997 on Military Courts.

¹⁷ Leigh, *Accountability of Security Sector Actors: The Human Rights Perspective*.

¹⁸ Ulum, "Reformasi Peradilan Militer Dan Urgensi Pengawasan Sipil Di Indonesia."

¹⁹ International Commission of Jurists (ICJ), "Military Justice and Impunity: Addressing the Rights of Victims in Human Rights Violations."

²⁰ Crouch, *Political Reform in Indonesia after Soeharto*.

²¹ United Nations Human Rights Committee, General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial.

²² Human Rights Watch, "Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities."

²³ International Commission of Jurists (ICJ), "Military Justice and Impunity: Addressing the Rights of Victims in Human Rights Violations."

There is also the issue of legal pluralism within Indonesia's judiciary. The existence of multiple court systems—general, religious, administrative, and military—complicates the harmonization of justice and leads to jurisdictional confusion. This fragmentation often hampers effective coordination in cases involving military actors and civilians²⁴.

Critics have noted that military courts often prioritize institutional reputation over justice for victims. In cases involving human rights abuses, military judges have tended to hand down lighter sentences or even acquit defendants altogether, citing internal discipline as a mitigating factor. This has led to calls from civil society for stronger external scrutiny and public access to military trials²⁵.

Despite these criticisms, proponents of the military court system argue that specialized courts are necessary to maintain discipline and operational effectiveness. They cite the unique nature of military service, which entails obedience to command and immediate decision-making in high-risk environments. However, this rationale must be balanced with the need for accountability and justice, especially when military personnel commit serious crimes against civilians²⁶.

In summary, Indonesia's military court system retains extensive jurisdiction over common crimes committed by TNI members, contrary to global trends and international legal standards. The persistence of this dualism reflects institutional inertia, military influence, and political compromise. Without substantial reform, Indonesia risks perpetuating a justice system that fails to deliver accountability and undermines the rule of law.

The Military Justice Systems in the United States and the Netherlands

The United States operates one of the most detailed and institutionalized military justice systems in the world, governed by the Uniform Code of Military Justice (UCMJ), codified in Title 10 of the United States Code. Enacted in 1950, the UCMJ applies uniformly to all branches of the armed forces and is enforced through the court-martial system, which includes summary, special, and general courts-martial²⁷.

Unlike Indonesia, the U.S. military court system incorporates a high degree of civilian oversight. The President, as Commander-in-Chief, and Congress, through legislative authority, regulate military justice, and the decisions of courts-martial are subject to review by the civilian United States Court of Appeals for the Armed Forces (CAAF). This institutional framework enhances accountability and reduces the risk of impunity²⁸.

A prominent case demonstrating the application of U.S. military justice to common crimes is *United States v. Calley*, involving the My Lai Massacre during the Vietnam War. Lieutenant William Calley was court-martialed and convicted of murdering civilians. The case showed that even high-ranking personnel could be held accountable, though the sentence was later significantly reduced²⁹.

Critically, the UCMJ does not exempt service members from trial in civilian courts if jurisdiction overlaps, particularly in domestic contexts. For instance, military personnel can be tried in state courts for crimes committed off base or against civilians. This concurrent jurisdiction reflects a balance between military discipline and civilian judicial authority.

The U.S. system also affords due process protections similar to those in civilian courts, including the right to counsel, the presumption of innocence, and public trials. The Military Justice Act of 2016 introduced reforms aimed at further aligning courts-martial procedures with those of Article III

²⁴ Butt, *The Constitution of Indonesia: A Contextual Analysis*.

²⁵ KontraS, "Wajah Peradilan Militer Di Indonesia: Antara Impunitas Dan Minimnya Akuntabilitas."

²⁶ Soeprapto, "Pertanggungjawaban Pidana Anggota TNI Dan Reformasi Peradilan Militer Di Indonesia."

²⁷ Department of Defense (DoD), *COURTS-MARTIAL UNITED STATES Manual for Courts-Martial United States (2019 Edition)* TES.

²⁸ Fidell, "Military Justice: A Very Short Introduction."

²⁹ Powers, *The Killing of Lt. Calley*.

courts, reinforcing the commitment to fairness.

In contrast, the Netherlands has largely dismantled its separate military court system. Since 1991, military personnel have been subject to trial in civilian courts for both military and ordinary crimes. The integration was implemented through legislative reforms that abolished the military chamber of the Hoge Raad (Supreme Court) and delegated all criminal matters involving service members to ordinary judicial bodies³⁰

The Dutch rationale for this change was rooted in human rights concerns and the need for judicial impartiality. By unifying the military and civilian justice systems, the Netherlands ensured that all individuals, regardless of their status, are subject to the same legal standards and procedures. This approach aligns with international legal principles advocating equality before the law. Military disciplinary matters in the Netherlands are now dealt with administratively, not judicially. Commanders can impose disciplinary sanctions for minor infractions, but serious offenses are handled by civilian courts. This separation reinforces transparency and the rule of law without undermining military discipline.

Despite initial resistance from the defense sector, the Dutch reform has generally been regarded as successful. It has minimized legal dualism and improved public trust in the armed forces. Moreover, the reform has served as a model for other European countries considering similar integration of their military justice systems³¹.

In terms of international obligations, both the United States and the Netherlands demonstrate a higher degree of compliance with human rights standards than Indonesia. The U.S. system retains military courts but subjects them to substantial oversight, while the Dutch model entirely removes military jurisdiction over ordinary crimes, relying on civilian judicial institutions for enforcement. However, the U.S. model is not without criticism. Some scholars argue that the military hierarchy still influences the court-martial process, particularly in command decisions to initiate charges. Critics point to potential conflicts of interest and lack of prosecutorial independence, although recent reforms have sought to address these gaps.

The Netherlands, by contrast, avoids these concerns by eliminating such military-specific adjudication altogether. Yet, it retains mechanisms to ensure that military-specific contexts, such as war zone conduct or operational secrecy, are considered during trials, often through the inclusion of military experts or specialized prosecutors. Comparatively, the dual approach of the United States—military courts with civilian review—and the integrated model of the Netherlands—civilian courts with military advisory input—both serve as viable frameworks. These systems recognize the need to balance military efficiency with legal accountability, albeit through different institutional designs.

Indonesia's system stands in contrast to both, maintaining military courts with minimal civilian input and oversight. This structural divergence raises questions about the compatibility of Indonesia's model with democratic principles and human rights commitments, particularly under the ICCPR.

In conclusion, the United States and the Netherlands represent two different but effective paradigms of military justice reform. Their experiences highlight the importance of transparency, civilian oversight, and judicial equality in upholding the rule of law within armed forces. These comparative insights offer valuable lessons for Indonesia as it contemplates restructuring its military justice system.

Comparative Analysis and Implications for Indonesia

The comparative analysis between Indonesia, the United States, and the Netherlands reveals critical structural and normative divergences in the treatment of military personnel who commit common crimes. At the heart of this divergence lies the jurisdictional question—whether military or civilian courts should adjudicate such crimes. While Indonesia maintains exclusive military jurisdiction, both the U.S. and the Netherlands have adopted more transparent and accountable approaches, aligning their practices more closely with international human rights standards.

³⁰ van Dijk, "Military Jurisdiction and Human Rights: The Impact of the European Convention on Human Rights."

³¹ van Dijk.

One of the most significant differences lies in the level of civilian oversight. In Indonesia, military justice operates under the Ministry of Defense and is largely insulated from civilian control. Conversely, in the United States, the role of Congress, the President, and civilian appellate courts provides multiple layers of scrutiny. This oversight ensures that military justice remains subordinate to democratic principles, minimizing the risk of institutional bias and impunity³²

The Dutch model goes even further by completely integrating military justice into the civilian judicial system. This approach not only eliminates jurisdictional ambiguity but also enhances public trust by subjecting all criminal behavior, regardless of the perpetrator's military status, to uniform standards of justice. The Netherlands' post-1991 reform is grounded in the principle of legal equality, a cornerstone of democratic legal systems.

Indonesia's continued use of military courts for prosecuting ordinary crimes committed by soldiers raises substantial human rights concerns. The lack of transparency, limited victim participation, and potential conflicts of interest undermine the legitimacy of military trials. These deficiencies have been documented by various human rights organizations, which note that victims, especially civilians, often perceive military trials as biased and opaque³³

From a rule of law perspective, integrating or at least restricting military jurisdiction is not just a matter of legal formality, but also one of public accountability. The Calley case in the U.S. and the Dutch transition to civilian jurisdiction both reflect an evolution toward enhanced accountability. In contrast, the Indonesian system remains prone to shielding military personnel from full legal scrutiny, particularly in cases involving human rights violations, such as the past abuses in Papua and Aceh³⁴

Further, when military courts exercise jurisdiction over common crimes, it sends a problematic message about the principle of equality before the law. Indonesian civilians and military personnel are tried under different legal systems for identical crimes, creating legal dualism and potential inequality. This contradicts Article 3 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a state party³⁵

Institutionally, the capacity and procedural safeguards of military courts in Indonesia are also less robust compared to civilian courts. While U.S. courts-martial have undergone reforms to ensure procedural fairness, Indonesian military courts continue to lack independent prosecutorial bodies and often depend on the chain of command, compromising judicial impartiality³⁶.

Another implication relates to victim access to justice. Victims of crimes committed by military personnel often face barriers to participation in trials held in military courts. This contrasts with civilian courts, where victims may have a greater opportunity to present evidence, testify, and obtain reparations. This disparity impacts public trust in the legal system and can exacerbate perceptions of impunity³⁷.

Additionally, both the U.S. and Dutch systems emphasize harmonization of military justice with broader legal standards. The U.S. reforms under the Military Justice Act of 2016 reflect a deliberate effort to converge military procedures with civilian judicial norms. The Dutch abandonment of

³² Fidell, "Military Justice: A Very Short Introduction."

³³ Human Rights Watch, "Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities."

³⁴ Amnesty International, "Indonesia: 'Don't Bother, Just Let Him Die': Killing with Impunity in Papua."

³⁵ United Nations Human Rights Committee, General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial.

³⁶ Setiawan, "The Urgency of Civilian Jurisdiction over Soldiers in Indonesia."

³⁷ International Commission of Jurists (ICJ), "Military Justice and Impunity: Addressing the Rights of Victims in Human Rights Violations."

military jurisdiction was a bolder step, but both systems aim to reduce exceptionalism within the armed forces' legal framework³⁸

For Indonesia, potential reform could begin with narrowing the jurisdiction of military courts to strictly military offenses—such as desertion, insubordination, or espionage—while transferring jurisdiction over ordinary crimes like murder, rape, or corruption to civilian courts. This would require amendments to the Military Court Law³⁹ and potentially the Indonesian Criminal Procedure Code (KUHAP).

Importantly, such a shift would not undermine military discipline. Instead, it would reinforce the military's legitimacy by aligning its practices with international norms and demonstrating a commitment to accountability. The Netherlands provides an illustrative example of how discipline and due process can coexist under a unified civilian legal system.

The political and institutional feasibility of reform in Indonesia depends on several factors, including the willingness of the military establishment to cede jurisdiction, the support of civil society, and the prioritization of the reform agenda by the executive and legislative branches. Previous efforts at reform, such as during the post-Reformasi era, were stalled due to political resistance from the armed forces⁴⁰.

Nevertheless, incremental reform remains possible. Legal scholars and civil society actors have proposed hybrid models in which mixed tribunals—composed of both military and civilian judges—could adjudicate cases involving military personnel accused of common crimes. This would be an intermediate step toward full civilian jurisdiction⁴¹.

In summary, the comparative data underscores that Indonesia's current military justice system lags behind democratic standards found in the United States and the Netherlands. It raises critical concerns about fairness, transparency, and legal equality. These comparative insights not only highlight normative gaps but also provide practical pathways for Indonesia to realign its legal framework with democratic and human rights standards.

Reforming military justice in Indonesia is not merely a legal exercise—it is a democratic imperative. The experience of other democracies shows that it is both feasible and beneficial to limit military courts' jurisdiction in order to uphold the rule of law. Failure to address this issue may perpetuate a culture of impunity and erode public trust in both the judiciary and the armed forces.

CONCLUSION

This comparative legal study has demonstrated that Indonesia's military justice system, in its current form, remains out of step with the principles of democratic accountability and international human rights law. The persistence of exclusive military jurisdiction over common crimes committed by military personnel has serious implications for justice, transparency, and equality before the law.

In contrast, the United States and the Netherlands offer instructive examples of military justice reform that prioritize civilian oversight and legal harmonization. The U.S. system, although still maintaining a distinct military judiciary, ensures multiple layers of oversight and substantial procedural protections. The Dutch approach—eliminating separate military jurisdiction entirely—represents a more radical, yet effective, model aligned with civilian legal norms.

The Indonesian system, governed by Law No. 31 of 1997, still permits military courts to adjudicate offenses that, by their nature, do not relate to military discipline. Such broad jurisdiction not only dilutes the notion of a specialized military court but also raises questions about impartiality and victim access to justice. Empirical evidence and reports from human rights organizations underscore these concerns.

³⁸ Department of Defense (DoD), *COURTS-MARTIAL UNITED STATES* Manual for Courts-Martial United States (2019 Edition) TES; van Dijk, "Military Jurisdiction and Human Rights: The Impact of the European Convention on Human Rights."

³⁹ Republic of Indonesia, Law No. 31 of 1997 on Military Courts.

⁴⁰ Mietzner, *The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance*.

⁴¹ International Commission of Jurists (ICJ), "Military Justice and Impunity: Addressing the Rights of Victims in Human Rights Violations."

The analysis confirms that limiting military jurisdiction to truly military offenses would not weaken military discipline. Rather, it would bolster institutional legitimacy and public confidence. Transferring jurisdiction over ordinary crimes to civilian courts, as practiced in democratic nations, offers a clear path forward that strengthens accountability and human rights compliance. Reform, however, is contingent on political will and institutional cooperation. The entrenched influence of the military within Indonesia's legal and political structure poses a significant challenge.

Yet, international obligations, civil society advocacy, and comparative legal reasoning provide compelling justifications for pursuing change.

In the long term, Indonesia must reframe its military justice system not as an exceptional domain but as one that operates within the larger constitutional and human rights framework. Options such as mixed tribunals or transitional models may serve as realistic starting points for reform, enabling gradual alignment with global standards.

Therefore, this study advocates for a reevaluation and amendment of the Military Court Law to restrict jurisdiction to internal disciplinary matters and to reintegrate ordinary criminal cases into the civilian judiciary. Legal reform should be accompanied by judicial training, civil-military dialogue, and public education to ensure its acceptance and effectiveness.

By learning from comparative experiences and reaffirming its international commitments, Indonesia can establish a military justice system that not only serves the needs of the armed forces but also upholds the rule of law, ensures equality before the law, and protects the rights of all individuals—civilian and military alike.