

## **Jurisdictional Dualism and Military Accountability: Challenges of Human Rights Enforcement in Indonesia's Security Sector**

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### **ABSTRACT**

This article critically examines the dual judicial system in Indonesia, which governs the prosecution of gross human rights violations involving members of the Indonesian National Armed Forces (TNI). While the Human Rights Court holds the legal authority to try serious violations, the concurrent jurisdiction of military courts over active military personnel creates significant barriers to accountability and justice. This legal dualism fosters impunity and weakens public trust in the justice system. Through the analysis of key cases, institutional dynamics, and the political legacy that perpetuates this impunity, the article highlights the expanded role of the military in internal security as a major factor. It argues that comprehensive legal and institutional reforms, along with strong political will, are essential to harmonize jurisdiction, strengthen civilian oversight, and ensure equality before the law. Such reforms are critical for Indonesia to reconcile national security concerns with human rights protections and to strengthen its democratic governance. The article concludes that addressing this dualism is crucial for achieving justice, enhancing public trust, and consolidating democratic principles in Indonesia.

**Keywords:** Human Rights Court, Military Accountability, Jurisdictional Dualism

### **INTRODUCTION**

Balancing national security and human rights is a critical and complex issue for Indonesia, especially given its history of authoritarianism, internal conflicts, and ongoing democratization efforts (Bilousov et al., 2022; Chyzhov, 2022; Jing, 2023; Montasari, 2022; Shevchuk et al., 2023). Since the Reformasi era began in 1998, Indonesia has sought to reconcile the demands of maintaining order and sovereignty with the need to protect civil liberties and human rights. The enactment of Law No. 26/2000 on the Human Rights Court marked a milestone in the country's legal framework, creating a dedicated institution tasked with prosecuting gross violations of human rights such as genocide, crimes against humanity, and war crimes (ICJR, 2020). Despite this, the court's effectiveness remains limited by several structural and political challenges, among which the role and status of the Indonesian National Armed Forces (Tentara Nasional Indonesia, TNI) in the justice system is one of the most significant.

Indonesia's security doctrine still heavily relies on the military as a primary institution responsible for safeguarding national unity and territorial integrity (Stetsenko et al., 2023). The legacy of the New Order regime (1966-1998), under which the military held broad sociopolitical functions under the *dwifungsi* (dual function) doctrine, continues to influence the current security and legal landscape (Aspinall, 2010). Although the Reformasi period formally separated military and police roles, and restricted the military's direct involvement in domestic affairs, TNI remains deeply embedded in internal security operations,

especially in conflict-prone regions like Papua and parts of Sulawesi. This militarized role complicates efforts to hold members accountable for human rights violations.

A central dilemma arises around jurisdiction and accountability: while Law No. 26/2000 stipulates that human rights courts can prosecute gross violations committed by anyone, including military personnel, the Indonesian legal system also maintains a separate military justice system governed by Law No. 31/1997. This law stipulates that active members of TNI must be tried in military courts unless they have been discharged from service (HRWG, 2019). Consequently, many cases involving alleged violations by active military personnel do not reach the human rights court or civilian courts but are instead processed within military tribunals, which are often criticized for their lack of independence, transparency, and impartiality (Komnas HAM, 2021).

This dual-track judicial system contributes significantly to the lack of accountability for military abuses. Investigations initiated by Komnas HAM into cases such as the Wasior and Wamena killings in Papua, the Tanjung Priok massacre in Jakarta, and the enforced disappearances during the late 1990s have repeatedly stalled or failed to lead to prosecutions. In many instances, the Attorney General's Office has declined to prosecute citing insufficient evidence or jurisdictional ambiguities, particularly when suspects are still in military service (ICJR, 2020). This effectively fosters a culture of impunity where members of the military are shielded from civilian legal processes, eroding public trust in justice mechanisms.

Empirical data underscores this impunity. Since the enactment of the Human Rights Court Law, only a handful of cases have been prosecuted, such as the East Timor atrocities trials, which resulted largely in acquittals or light sentences, despite extensive evidence from human rights organizations (Follesdal, 2021; Greeff, 2021; Jovičić, 2021; Medvedeva et al., 2020; Spano, 2018). Additionally, prosecutions for abuses in Papua, a hotspot of military operations against separatist movements, remain virtually non-existent in civilian courts, even as reports of arbitrary detention, torture, and extrajudicial killings proliferate (Yunanto & Damayanti, 2024). The 2018 designation of the Free Papua Movement (OPM) as a terrorist organization further complicates civilian oversight, enabling expanded military operations with minimal accountability (Lamb, 2021).

Further complicating this scenario is the blurred boundary between military and civilian judicial authority in cases involving retired military personnel. While retired officers technically fall outside the military justice system's exclusive jurisdiction, there is a persistent reluctance political and institutional to prosecute these individuals in civilian or human rights courts. The entrenched military influence in Indonesian politics and state institutions inhibits the willingness to pursue such prosecutions vigorously (Aspinall, 2010). This reluctance sustains a legal and political shield that obstructs justice for victims and undermines Indonesia's compliance with international human rights obligations.

In 2024, the administration under President Prabowo Subianto marked a significant political shift in how Indonesia addresses human rights issues. For the first time, a dedicated ministry for human rights affairs was established, reflecting a more structured and institutionalized approach to handling past and present human rights violations. Several prominent activists who were formerly victims of the 1998 repressive era have been appointed to key cabinet positions. This composition has challenged long-held assumptions about the government's stance on human rights, and it has been interpreted as a symbolic and practical gesture toward national reconciliation and the strengthening of transitional justice mechanisms.

This development signals a noteworthy transformation in Indonesia's political landscape, potentially offering new opportunities for progress in the long-stagnant human rights agenda. The inclusion of reform-era figures in state leadership and the formal elevation of human rights within the governmental structure suggest an intention to break from past patterns of neglect and impunity. Nonetheless, this political

momentum faces structural limitations, particularly when allegations of abuse involve the TNI. While political gestures are important, the legal machinery to prosecute military actors remains complicated by overlapping jurisdictions and institutional resistance rooted in long-standing civil-military dynamics.

Indonesia's international commitments, such as ratification of the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), require that all individuals regardless of their military status are subject to impartial judicial processes and protected from arbitrary detention or torture (UN OHCHR, 2020). However, domestic legal frameworks and political realities have yet to realize these principles fully. Indonesia's dualist legal system, which requires international treaties to be domesticated before having full effect, combined with entrenched military autonomy, has resulted in a gap between international standards and actual practice.

The ongoing tension between national security imperatives and human rights protections is further intensified by the expanded powers granted to the TNI in counterterrorism efforts under the 2018 Anti-Terror Law amendments (Law No. 5/2018). This legislation authorizes the military to participate in civilian counterterrorism operations, blurring the traditional separation of military and civilian jurisdictions and raising serious concerns about human rights abuses under the veil of security (Amnesty International, 2018). The law permits prolonged detention without charge and broad discretionary powers, increasing the risk of arbitrary arrests and abuse, particularly among marginalized groups.

Thus, the question of whether and how members of the TNI both active and retired can and should be tried in human rights courts is more than a legal technicality. It embodies the broader struggle of Indonesia to transition from a militarized authoritarian legacy toward a democratic rule of law that respects human dignity and accountability. Without resolving this issue, the country risks perpetuating a bifurcated justice system that undermines both security sector reform and the protection of fundamental rights.

Previous research by Aspinnall (2010) has extensively discussed the dual judicial system in Indonesia, examining the historical role of the military in politics and the challenges this poses to the country's transition to democracy, particularly in terms of holding military personnel accountable for human rights violations. Similarly, a study by Yunanto & Damayanti (2024) highlighted the lack of accountability for military personnel, focusing on the absence of legal consequences for abuses in Papua and the broader issues surrounding impunity within the Indonesian military. The novelty of this research lies in its focus on the normative ambiguities and institutional barriers that prevent effective prosecution of military personnel for gross human rights violations in Indonesia's dual judicial system. By critically analyzing the intersections of national security concerns, political resistance, and the justice system's limitations, this study presents a more comprehensive view of how Indonesia can navigate the complex relationship between military power and human rights protection, providing new insights into how to harmonize military and civilian jurisdictions in this context.

This study therefore aims to analyze the normative ambiguities and institutional obstacles that hamper effective prosecution of military personnel in human rights courts. It draws on legal frameworks, documented case studies, and institutional assessments to argue for the urgent need to harmonize military and civilian judicial systems, strengthen civilian oversight, and ensure that all perpetrators of gross human rights violations face equal justice, regardless of their military affiliation. This analysis contributes not only to Indonesia's transitional justice agenda but also to the global discourse on civil-military relations and human rights in post-authoritarian democracies.

## RESEARCH METHODS

This study employs a qualitative research approach to deeply explore the legal and institutional dynamics influencing the balance between national security and human rights in Indonesia. A qualitative approach is chosen as it allows for a comprehensive understanding of complex legal frameworks, institutional roles, and socio-political contexts, which cannot be adequately captured through quantitative methods. The research is designed as a doctrinal legal study complemented by policy and institutional analysis. It involves examining relevant statutory laws, constitutional provisions, and international treaties ratified by Indonesia, with a particular focus on Law No. 26/2000 on Human Rights Courts and Law No. 31/1997 on Military Courts. The study also analyzes case law, judicial decisions, and reports from institutions such as Komnas HAM and human rights organizations, providing insights into the practical application and challenges of prosecuting human rights violations involving military personnel.

Data for this research are sourced primarily from secondary materials, including official legal texts, government publications, institutional reports, academic articles, and relevant media coverage. The collection process involves a systematic document review and content analysis, enabling the identification of key legal provisions, judicial practices, and socio-political factors that affect accountability and oversight of military-linked human rights abuses. Themes such as jurisdictional conflicts, institutional impunity, and the legacy of Indonesia's security doctrine are closely examined to understand the multifaceted challenges in enforcing human rights law within a militarized context.

The analysis applies qualitative content techniques to categorize and interpret the data, seeking to uncover patterns and contradictions within the Indonesian legal and security system. This includes comparing domestic practices with international human rights standards to assess compliance and identify areas for reform. To enhance validity and reliability, the study triangulates data from multiple credible sources and cross-verifies interpretations with official documents and scholarly works. However, the research acknowledges limitations arising from its reliance on secondary data, which may not fully capture informal or classified military practices. Access to internal military records or firsthand accounts is limited, suggesting the need for future empirical studies involving field research or interviews to complement the findings.

## RESULTS AND DISCUSSION

### 1. Jurisdictional Dualism: Human Rights Court vs. Military Courts

One of the most fundamental challenges in enforcing human rights accountability in Indonesia lies in the coexistence of two separate judicial systems with overlapping and conflicting jurisdictions: the Human Rights Court (Peradilan HAM) and the Military Court (Peradilan Militer). According to Law No. 26 of 2000, the Human Rights Court is empowered to prosecute individuals responsible for gross human rights violations, including genocide, crimes against humanity, and war crimes. This law, in principle, affirms the state's commitment to international human rights standards and signals a legal mechanism to hold perpetrators accountable, irrespective of their position.

However, Law No. 31 of 1997 on Military Courts establishes that active members of the TNI may only be tried within the military justice system, unless they have been discharged. This creates a legal ambiguity and institutional tension, as cases involving active military personnel accused of gross human rights violations often fall under military jurisdiction, thereby excluding civilian human rights courts. The result is a *de facto* impunity shield for active members of the armed

forces, since military courts have a history of lacking transparency, impartiality, and independence from military command structures.

This jurisdictional dualism is not merely a technical legal issue but a deeply political and institutional problem. It undermines the universality of human rights protections by creating a privileged legal status for military personnel, contradicting the principle of equality before the law enshrined in Indonesia's constitution and international human rights treaties. The tension also impairs the ability of the Human Rights Court to fulfill its mandate effectively, as numerous cases involving military suspects never reach the court or are stalled indefinitely.

## **2. Case Studies Illustrating Enforcement Challenges**

The effects of this dual jurisdiction are evident in several emblematic cases. For example, the Wasior and Wamena incidents in Papua involved alleged mass extrajudicial killings and abuses by military forces. Although Komnas HAM conducted thorough investigations and submitted pro justitia reports recommending prosecutions, these recommendations have yet to translate into effective legal action in civilian courts. The Attorney General's Office frequently cites jurisdictional issues or insufficient evidence, despite documented testimonies and forensic evidence.

Similarly, the shootings at Trisakti University and the Semanggi demonstrations during the Reformasi period, which resulted in dozens of deaths, also highlight the failure of the legal system to hold military personnel accountable. These cases were referred to the Human Rights Court but ended with acquittals or non-prosecution. The failure to secure convictions in these high-profile cases demonstrates the limitations of the judicial system in overcoming institutional resistance and political interference.

## **3. Structural Impunity in Military Justice**

The military justice system itself is a significant contributor to impunity. Trials conducted in military courts are typically closed to the public, limiting transparency. Defendants are judged by military officers who are part of the same institution, raising serious questions about impartiality and fairness. This system has been criticized by human rights organizations for favoring acquittals or light sentences, particularly when senior officers are implicated.

The lack of civilian oversight over military courts perpetuates this impunity. While Komnas HAM and other oversight bodies exist, their recommendations often lack binding power. The military maintains considerable autonomy and influence over internal disciplinary processes, making it difficult to achieve accountability through civilian legal mechanisms.

## **4. Legal and Political Challenges with Retired Military Personnel**

A nuanced aspect of this problem concerns retired military officers. Although retired personnel legally fall outside the exclusive jurisdiction of military courts and can theoretically be prosecuted in civilian courts, in practice, their prosecution is rare and often politically complicated. Many retired officers maintain significant informal power networks within the military and political spheres. This influence frequently translates into protection from prosecution, perpetuating a culture of impunity.

Moreover, the political sensitivity surrounding military prosecutions contributes to reluctance among prosecutors and judges to pursue such cases vigorously. The military is still regarded by some political elites as an essential actor in national stability, and attempts to hold its members accountable risk destabilizing entrenched power balances.

## **5. Contradictions with International Human Rights Commitments**

Indonesia's dual justice system presents clear contradictions with international human rights norms. By ratifying treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), Indonesia has committed to equal application of justice and protection against torture and extrajudicial punishment. The continued preference for military jurisdiction over civilian courts for active personnel is inconsistent with these obligations.

The limited prosecution and low conviction rates of military personnel for human rights violations have drawn criticism from international human rights bodies, which call on Indonesia to reform its military justice system to ensure accountability and compliance with international standards. Failure to do so not only damages Indonesia's international reputation but also undermines domestic confidence in the rule of law.

## **6. Impact of Expanded Military Role in Internal Security**

The 2018 amendments to Indonesia's Anti-Terrorism Law, which expanded the TNI's role in counterterrorism operations, introduce additional complexity. While aimed at strengthening national security, this shift risks increasing the potential for human rights abuses by expanding military powers within civilian spheres.

The TNI's participation in civilian security tasks raises concerns about accountability mechanisms because military personnel operating in these roles remain subject to military justice, with limited civilian oversight. This shift heightens the risk of arbitrary detentions, unlawful use of force, and restrictions on civil liberties risks exacerbated by weak accountability structures.

## **7. Historical Legacy and Civil-Military Relations**

The institutional dynamics between military and civilian authorities in Indonesia are shaped by historical legacies. The New Order's *dwifungsi* doctrine institutionalized the military's political role and internal security functions, which has left lasting influence on post-Reformasi governance. Despite formal reforms, the military retains significant autonomy and influence in political, economic, and security sectors. This legacy complicates efforts to reform military justice and enforce accountability for past abuses. The military's entrenched position has allowed it to resist judicial oversight, shaping legal and institutional responses to human rights violations.

## **8. Pathways to Reform and Strengthening Accountability**

Addressing these challenges requires comprehensive reforms. Harmonizing the jurisdiction of human rights and military courts is essential to eliminate legal ambiguities that shelter perpetrators. Strengthening civilian oversight of the military, including over military justice, is critical to ensuring transparency and fairness.

Legal reforms should aim to establish clear, binding mechanisms for prosecuting military personnel suspected of human rights violations in civilian courts, regardless of active or retired status. Empowering Komnas HAM and ensuring its recommendations are enforceable can improve accountability.

Furthermore, political will is indispensable. Government leadership must prioritize human rights and judicial independence, resisting military pressure and political interference. Civil society and international actors can play supportive roles by advocating for reforms and monitoring progress.

Indonesia's journey toward balancing national security and human rights is hindered by institutional dualism, political sensitivities, and entrenched militarism. The coexistence of separate military and civilian judicial systems perpetuates impunity for human rights violations committed by military personnel. To uphold the rule of law and meet international commitments, Indonesia must enact structural reforms that ensure military accountability, harmonize jurisdictional authority, and empower civilian oversight. Only then can Indonesia strengthen democracy and protect the fundamental rights of all its citizens.

## CONCLUSION

The dual judicial system in Indonesia, consisting of the Human Rights Court and the Military Court, significantly hinders justice and accountability for human rights violations involving members of the Indonesian National Armed Forces (TNI). Although the Human Rights Court is legally authorized to try serious violations, the concurrent jurisdiction of military courts over active military personnel creates a substantial legal gap that fosters impunity. This impunity undermines the rule of law and erodes public trust in the justice system, allowing military personnel to remain largely shielded from civilian judicial oversight. The political influence of both active and retired military members further complicates accountability efforts, as entrenched networks of power, coupled with the military's legacy of dual function, persistently resist reforms that could strengthen civilian oversight and judicial independence. This situation contradicts Indonesia's international human rights obligations and hampers progress in transitional justice. Furthermore, the growing role of the military in internal security, as highlighted by recent legislation, raises concerns about the potential for more human rights violations without sufficient accountability mechanisms in place. To address these challenges, Indonesia must implement comprehensive reforms to clarify jurisdictional authority, increase the transparency and independence of military justice, and empower civilian institutions like Komnas HAM to effectively protect human rights. Political will and a strong commitment to upholding equality before the law are crucial to dismantling structural impunity and restoring public trust. Such efforts are vital for reconciling Indonesia's national security goals with the protection of human rights and the strengthening of its democratic institutions.

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