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Problems of Legal Certainty in Determining Judicial Competence for TNI Soldiers in General Criminal Offenses

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Abstract

The determination of judicial competence for Indonesian National Armed Forces (TNI) soldiers who commit general crimes faces normative issues due to differences in construction between Law Number 31 of 1997 concerning Military Justice and Law Number 34 of 2004 concerning the TNI. This study aims to analyze the regulation of judicial competence for TNI soldiers who commit general crimes and to test the legal certainty in determining the judicial forum. This study is a normative legal study using a statutory and conceptual approach. The analysis was conducted on Article 9 of Law 31/1997 and Articles 65 and 74 of the TNI Law using the theory of judicial competence or jurisdiction and Gustav Radbruch's theory of legal certainty. The results of the study indicate that Law 31/1997 establishes the status of soldiers as the basis for military judicial competence (subject-based jurisdiction), while Article 65 of the TNI Law shifts this basis by differentiating competence based on the type of crime (offense-based jurisdiction). This shift has not yet been fully implemented operationally because Article 74 of the TNI Law maintains the validity of Law 31/1997 until the new Military Court Law is enacted. This situation raises legal certainty issues regarding clarity, consistency, and predictability of judicial forums. This problem is not caused by a lack of legal basis, but rather by the existence of two intertwined normative bases in determining judicial competence.

Keywords: Legal Certainty, Judicial Competence, TNI Soldiers.

INTRODUCTION

Indonesia is a state of law, as stated in Article 1, paragraph (3), of the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law establishes law as the basis for organizing national life, including the implementation of judicial power. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that judicial power is an independent power to administer justice to uphold law and justice. This provision is

the basis for implementing the judicial system in Indonesia, which is further regulated by Law Number 48 of 2009 concerning Judicial Power. In this system, the authority of a judicial body to examine and try cases is determined by the legal provisions that govern it. Therefore, determining judicial competence is part of the construction of procedural law and judicial institutions that

determine the authorized forum in resolving a case (Ismoyo et al., 2025).

The specificity of determining judicial competence applies to cases involving Indonesian National Armed Forces (TNI) soldiers. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that every citizen has equal standing before the law and government, while Article 30 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia regulate the position of the TNI as a state instrument that plays a role in the national defense system. This position gives rise to special legal regulations for TNI soldiers, including regarding accountability for criminal acts. In the Indonesian legal system, TNI soldiers fall under military justice regulations specifically established to address certain cases involving soldiers. At the same time, soldiers remain legal subjects who can commit crimes regulated by general criminal law. The differences in the character of these crimes are directly related to the determination of the judicial environment with authority to examine and try cases involving TNI soldiers (Saleh et al., 2024).

Regulations on the judicial competence of TNI soldiers are set out in Law Number 31 of 1997 concerning Military Justice. Article 9, number 1 of the law stipulates that courts within the military justice system have the authority to try crimes committed by individuals who were soldiers at the time of the crime. This formulation places the perpetrator's status as a soldier as one of the bases for determining military judicial competence. This construction differs from systems that determine the forum solely by the type of crime, because the authority of military justice under Article 9 is based on the legal status of the perpetrator at the time the crime was committed. This regulation is part of the military justice regime that continues to apply under Indonesian positive law (Abdurahman & Salam, 2026).

The development of regulations on the position of soldiers in the judicial system is evident in Law Number 34 of 2004 concerning the TNI. Article 65 paragraph (2) stipulates that soldiers are subject to the authority of military justice in cases of committing violations of military criminal law and are subject to the authority of general courts in cases of committing violations of general criminal law regulated by law. This provision introduces a distinction in judicial competence based on the character of the crime committed by soldiers. Military crimes fall within the scope of military justice, while general courts address general crimes. This regulation reflects a change in the construction of the judicial forum for soldiers, especially for crimes that do not have the character of a military crime (Chariansyah, 2026).

These regulatory changes are closely related to the transitional provisions in Article 74 of the TNI Law. Article 74 paragraph (1) stipulates that the provisions regarding judicial competence as referred to in Article 65 apply when the new law on Military Courts is enacted. Furthermore, Article 74 paragraph (2) stipulates that as long as the new law on Military Courts has not been established, soldiers remain subject to the provisions of Law Number 31 of 1997 concerning Military Courts. These provisions designate Law 31/1997 as the legal basis to be used during the transition period towards the new military justice regime. The problem is that these transitional provisions bring together two constructions regarding judicial competence: Article 9 of Law 31/1997, which grants authority to military courts based on the perpetrator's status as a soldier, and Article 65 of the TNI Law,

which differentiates competence based on the type of crime (Ridlo et al., 2024).

This situation raises issues when TNI soldiers commit general crimes. Based on Article 65 paragraph (2) of the TNI Law, general crimes committed by soldiers are placed under the jurisdiction of general courts. On the other hand, Article 74 paragraph (2) maintains the validity of Law 31/1997 as long as a new military court law has not been established, while Article 9 of Law 31/1997 grants authority to military courts to try crimes committed by soldiers. This condition raises issues in determining the legal basis for assessing the competence of the courts over soldiers who commit general crimes, especially when the provisions governing the type of crime and the provisions governing the status of the perpetrator provide different directions regarding the judicial forum (Fikri et al., 2025).

The issue of competence relates to the principle of legal certainty in the administration of justice. Legal certainty not only requires a legal basis for law enforcement but also requires clear regulations regarding the authority of the institution carrying out the process. In criminal cases committed by TNI soldiers, certainty regarding the judicial forum is crucial from the initial stages of case handling because it relates to the authority for investigation, prosecution, examination, and decision-making. When more than one normative construct can serve as a basis for determining the judicial environment, the issue is not merely the existence of legal norms, but also the clarity and consistency of their application in identifying the authorized judicial forum (Pebrianto, 2024).

This issue has consequences for law enforcement practices because determining the judicial environment will determine the overall mechanism for examining cases. Basic differences in determining competence can affect the institutions conducting investigations and prosecutions, as well as the legal procedures used in the judicial process. This situation becomes increasingly relevant when the provisions of Article 74 of the TNI Law, which initially functioned as a transitional provision, still serve as the basis for maintaining the validity of Law 31/1997, while the direction of the regulations in Article 65 of the TNI Law has differentiated judicial forums based on the type of crime. This issue underscores the need to systematically examine the relationship between the two legal regimes, particularly to determine the judicial forum for soldiers who commit general crimes. Furthermore, Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI) does not change the substance of Articles 65 and 74 of the TNI Law.

Studies on military justice in Indonesia have developed from various perspectives, including regarding the position of military justice in the judicial system, the criminal responsibility of soldiers, and the relationship between military justice and general justice. The issue of judicial competence for soldiers who commit general crimes has a more specific analytical scope because it concerns the change in the regulatory basis from Law 31/1997 to the TNI Law, as well as the existence of transitional provisions in Article 74. The relationship among Article 9 of Law 31/1997, Article 65, and Article 74 of the TNI Law needs to be placed within a single analytical framework to examine how judicial competence is determined and whether this framework provides certainty in identifying the judicial forum. Based on this construction, this study discusses the regulation of judicial competence for TNI soldiers who commit general crimes, as well as the legal certainty in determining such judicial competence.

RESEARCH METHODS

This research is a normative legal study that analyzes legal norms regarding judicial competence in cases involving TNI soldiers who commit general crimes. The approaches used are statutory and conceptual. The statutory approach is used to analyze the 1945 Constitution of the Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, Law Number 31 of 1997 concerning Military Justice, and Law Number 34 of 2004 concerning the TNI as amended by Law Number 3 of 2025, especially provisions relating to judicial competence towards soldiers. The conceptual approach is used to analyze judicial competence or jurisdiction and legal certainty in determining the judicial forum (Rosidi et al., 2026).

The legal materials used consist of primary and secondary legal materials. Primary legal materials consist of relevant laws and court decisions. In contrast, secondary legal materials consist of books, scientific journals, and academic works related to military justice, military criminal acts, judicial competence, and legal certainty. The legal materials are analyzed both prescriptively and analytically by identifying, interpreting, and linking legal provisions governing the judicial competence of TNI soldiers. The analysis is directed at obtaining a legal construction regarding the authorized judicial forum and assessing legal certainty in the application of Article 9 of Law 31/1997, Article 65, and Article 74 of the TNI Law to soldiers who commit general crimes (Kamal & Djanggih, 2026).

RESULTS AND DISCUSSION

A. Regulation of Judicial Competence for TNI Soldiers Who Commit General Crimes

The determination of judicial competence for Indonesian National Armed Forces (TNI) soldiers is inseparable from the authority structure established by Law Number 31 of 1997 concerning Military Justice and Law Number 34 of 2004 concerning the TNI. The two laws demonstrate different approaches in determining the competent judicial environment. This difference is primarily evident in the basis used to connect a soldier to a judicial environment, namely, the relationship between the status of the perpetrator and the type of crime committed. To systematically examine this construction, judicial competence can be analyzed through the concepts of subject-based and offense-based jurisdiction (Setiawan et al., 2026).

Article 9, paragraph 1 of Law Number 31 of 1997 stipulates that courts within the military justice system have the authority to adjudicate crimes committed by individuals who were soldiers at the time of the crime. This formulation demonstrates that the legal status of the perpetrator at the time the crime was committed is the primary starting point in determining the competence of military justice. As long as a person holds the status of a soldier at the time the crime was committed, the case is essentially within the scope of the competence of military justice as stipulated in the Military Justice Law. The construction of Article 9 demonstrates the character of subject-based jurisdiction, namely that judicial competence is determined primarily based on the identity or legal status of the subject who committed the crime. In this construction, the primary question determining the judicial forum is not whether the act is a military or general crime, but rather who committed it. Status as a soldier becomes a connecting factor between the perpetrator and the military justice system (Sahputra, 2026).

This approach can be understood in light of the character of military justice as a special court established to try certain legal subjects who hold a special position and obligations within the state defense structure. The competence of military justice within the framework of Law 31/1997 is therefore not solely based on the nature of the act, but also on the legal relationship between the perpetrator and the military institution. Consequently, substantially general crimes can still fall within the jurisdiction of military justice as long as they are committed by subjects who meet the qualifications of Article 9. In the concept of determining judicial competence, this construction indicates that the personal status of the perpetrator serves as the basis for attributing jurisdiction. This distinguishes the approach of Law 31/1997 from the competency model that makes the character of the crime the primary basis for determining the forum. In other words, Law 31/1997 establishes the competence of military justice through a person-based approach, not solely an offense-based one.

This construction was amended by Article 65 paragraph (2) of Law Number 34 of 2004 concerning the TNI. This provision distinguishes among judicial forums based on the type of criminal violation committed by soldiers. Soldiers are subject to military justice for violations of military criminal law. In contrast, violations of general criminal law are subject to the authority of general justice. The basis for determining competence in this provision is no longer solely based on the perpetrator's status as a soldier, but on the legal character of the crime committed. Article 65 paragraph (2) shows a shift towards offense-based jurisdiction. Competence no longer automatically follows from a person's status as a soldier but is determined by the classification of the crime. If the act committed is a military crime, competence lies with military justice. If the act is a general crime, competence is directed to general justice. This distinction indicates a paradigm shift in the role of military justice, from a forum whose competence is primarily tied to the status of the perpetrator to one whose competence is linked to the specific nature of military crimes (Gifita & Hartanto, 2026).

This change has important legal consequences. Status as a soldier can no longer be understood as the sole basis for determining the judicial forum. Soldiers remain special legal subjects in the military environment, but when committing general crimes, the relationship between the perpetrator's status and judicial competence is no longer automatic. The type of crime becomes the variable that determines the judicial forum. Therefore, Article 65 paragraph (2) can be understood as a legislative effort to limit the competence of military courts while expanding the application of general judicial jurisdiction to general crimes committed by soldiers.

In the concept of determining judicial competence, the changes indicate a shift from subject-based jurisdiction to offense-based jurisdiction. This shift is not merely a technical change in the institution authorized to adjudicate, but also a change in the basis for attributing judicial authority. While in Law 31/1997 the status of soldiers is the main factor in determining competence, Article 65 of the TNI Law uses the type of crime as the basis for distinguishing between the jurisdiction of military courts and general courts. This shift has not immediately changed judicial competence in practice because the TNI Law itself provides transitional provisions through Article 74. Article 74 paragraph (1) stipulates that the provisions of Article 65 apply when the new law on Military Courts is enacted. Furthermore, Article 74 paragraph

(2) stipulates that as long as the new law on Military Courts has not been established, the provisions of Law Number 31 of 1997 concerning Military Courts remain in effect (Rini, 2025).

Constructively, Article 74 serves as a normative bridge between the regime of Law 31/1997 and the competence regime envisioned by Article 65 of the TNI Law. The legislators have determined the direction of change under Article 65, but it is not intended to take effect immediately without the enactment of a new military justice law. Until the new legal instrument is enacted, Law 31/1997 remains the operational legal basis. This construction demonstrates that Article 74 is not merely a supplementary provision but rather determines when changes to the competence basis in Article 65 can be implemented in practice. Article 65 establishes a new competency design, while Article 74 specifies the normative conditions that must be met for its implementation. Consequently, there is a difference between the regulatory direction and operational applicability. The regulatory direction points to the separation of competence based on the type of crime. At the same time, the transitional provisions still maintain the regime that places soldier status as a crucial basis for military justice competence (Huda & Abdullah, 2024).

This also shows that the relationship between Law 31/1997 and the TNI Law cannot be resolved solely by using the principle of *lex posterior derogat legi priori*. The TNI Law was indeed born later, but the drafters of the TNI Law explicitly regulated the validity of Law 31/1997 through Article 74 paragraph (2). This means that the validity of Law 31/1997 during the transition period is not solely due to the absence of legislative changes, but rather a normative choice explicitly maintained by the TNI Law itself. Therefore, Law 31/1997 continues to function as the basis for judicial competence until the conditions stipulated in Article 74 are met (Chandra, 2020).

Based on this description, the construction of judicial competence for TNI soldiers shows two stages of legal development. Law 31/1997 primarily bases military judicial competence on the perpetrator's status, while Article 65 of the TNI Law introduces a distinction based on the type of crime. This change substantively shifts the basis of competence from subject-based jurisdiction to offense-based jurisdiction. However, this shift has not yet fully led to a change in operational competence because Article 74 of the TNI Law requires Article 65 to come into effect when the new Law on Military Courts is enacted, and, until that condition is met, it maintains Law 31/1997. Therefore, in positive law there is a difference between the design of competence desired by Article 65 and the basis of competence that remains in effect under Article 74 in conjunction with Law 31/1997.

In the context of soldiers committing general crimes, this construction means that under the *ius constituendum*, as directed by Article 65, the intended forum is the general court, whereas under the *ius constitutum*, as maintained through Article 74, Law 31/1997 remains the basis for regulating military justice. Thus, the issue at this stage is not primarily determining whether there is legal certainty, but rather indicating that the changes to the competency basis formulated in the TNI Law have not been fully realized in the applicable judicial competency structure.

B. Legal Certainty in Determining the Judicial Competence of TNI Soldiers Who Commit General Crimes

The issue of legal certainty in determining the judicial competence of TNI soldiers who commit general crimes does not arise from the absence of regulations, but rather from two normative bases that can influence the determination of the judicial forum. Article 65 paragraph (2) of the TNI Law directs soldiers who commit general crimes to submit to the authority of general courts. At the same time, Article 74 paragraph (1) links the enactment of this provision with the enactment of the new law concerning Military Courts, while Article 74 paragraph (2) maintains the validity of Law Number 31 of 1997 as long as the new law has not been established. In Law 31/1997, Article 9, number 1, authorizes military courts to try crimes committed by someone who, at the time of the crime, held the status of a soldier. Law 31/1997 is still recorded as being in effect.

From Gustav Radbruch's perspective on legal certainty, the law must provide a framework that enables legal subjects to know and understand the legal consequences of an action. Legal certainty is not simply understood as the formal existence of a norm, but also requires clarity regarding the law that must be applied. In the context of judicial competence, this measure can be drawn from the question of whether it is known from the outset which judicial environment is authorized to examine and try a crime. If a soldier commits a general crime, Article 65 paragraph (2) of the TNI Law provides a relatively clear direction, namely general justice. However, this clarity conflicts with Article 74 of the TNI Law, which subjects the application of Article 65 to certain conditions and maintains Law 31/1997 until the new military justice law is enacted. Meanwhile, Article 9 of Law 31/1997 determines the competence of military justice based on the perpetrator's status as a soldier (Reumi et al., 2025).

This situation demonstrates that the problem lies in the clarity of jurisdiction. Legal norms are indeed available, but the relationship among these norms has not yet yielded a straightforward answer regarding the authorized forum. Article 65 provides an answer based on the type of crime, while the regime of Law 31/1997, which is maintained by Article 74, provides a basis based on the status of the perpetrator. Therefore, legal certainty in terms of clarity has not been fully achieved because determining the forum requires interpreting the relationship between provisions, rather than simply applying a single norm.

The next issue relates to normative consistency. In the theory of legal certainty, applicable norms ideally form a system that can be understood coherently so that their application does not produce contradictory directions. In cases of soldiers committing general crimes, there is a need to determine whether Article 65 of the TNI Law and Article 9 of Law 31/1997 can be placed within a consistent legal framework. Chronologically, Law 34/2004 is a newer law than Law 31/1997. Therefore, the principle of *lex posterior derogat legi priori* can essentially be one of the principles in interpreting the relationship between the two regulations. However, the application of this principle cannot be achieved simply by stating that all provisions of Law 31/1997 automatically lose their validity upon the enactment of the TNI Law. This is because Article 74 paragraph (2) of the TNI Law explicitly maintains Law 31/1997 as long as the new law on Military Courts has not been established (Lubis, 2021).

This means that the validity of Law 31/1997 during the transitional period is not simply a consequence of legislative negligence in revoking the old law, but rather a consequence of normative choices directly formulated by the drafters of the TNI Law. At this

point, *lex posterior* cannot be used to override Article 74 because the newer law provides transitional legitimacy to the validity of Law 31/1997. This construction requires that Article 65 and Law 31/1997 be read together in determining judicial competence. The question then shifts from "which norm is newer?" to "how does the newer norm regulate the validity of the older norm?" Article 74 is a key provision because it both acknowledges the direction of change in competence under Article 65 and preserves the previous competence regime under Law 31/1997. From a legal-consistency perspective, this construction results in a complex normative relationship because changes in substantive law have not been fully reflected in changes in institutional and jurisdictional law (Muhammad & Hoetomo, 2025).

Legal certainty also includes a dimension of predictability. In the context of judicial competence, the law should enable law enforcement officials and interested parties to determine the authorized forum before the judicial process begins rationally. The issue is not simply whether there are rules regarding competence, but whether the application of those rules allows for consistently predictable answers. In the case of soldiers committing general crimes, this predictability is problematic because there are two starting points. If the character of the crime is used as a basis, Article 65 points to general justice. If the status of the perpetrator and the applicability of Law 31/1997 are used as a basis, there is a basis for military justice competence. Article 74 provides an explanation of the transition period while maintaining the validity of the previous regime. Consequently, the determination of the forum is not solely determined by the classification of the crime, but requires further construction of the relationship between Articles 65, 74, and Law 31/1997 (Suhartono et al., 2026).

Predictability issue is crucial because judicial competence is an absolute competence that determines the competent judicial environment from the outset. Mistakes in determining the forum are not merely technical matters but can have implications for the entire law enforcement process. Therefore, the more complex the interpretation required to determine the forum, the greater the scope for differences in legal application. A more fundamental issue lies in Article 74 as a transitional provision. Conceptually, transitional provisions are created to bridge the transition from one legal regime to a new one. Their existence is necessary to prevent a legal vacuum during the change process. In the context of the TNI Law, Article 74 fulfills this function by maintaining Law 31/1997 until the new Military Court Law is enacted (Zasmin, 2026).

Problems arise when the transition period lasts for a very long time. Law 31/1997 was enacted in 1997 and remains in effect to this day. Meanwhile, the latest amendment to the TNI Law, Law No. 3 of 2025, amended several elements of Law 34/2004, but did not replace Law 31/1997 as the Military Justice regime. This situation means that provisions originally designed as a bridge to the new regime continue to play a decisive role in the existing legal system (Pramono, 2020).

This is where the concept of a prolonged transitional regime can be developed: a situation in which transitional provisions intended to be temporary remain in effect for an extended period, thereby maintaining two legal constructs over time. In the context of military judicial competence, this situation shifts jurisdiction towards an offense-based model, as formulated in Article 65, which has not yet fully achieved the institutional consequences intended by the norm. Transitional provisions continue to maintain the old regime, resulting in a gap between the direction of legal

reform and the law that applies operationally (Wicaksono et al., 2025).

This situation is crucial from a legal certainty perspective, as certainty requires not only the existence of applicable norms but also stability, consistency, and the ability of legal subjects to predict how the law will be applied. When the transition period is prolonged, and the judicial forum still requires reconstruction of several provisions, this transitional function has the potential to become a source of uncertainty. The legal problem lies not in a legal vacuum but in overlapping normative bases for determining judicial competence.

Based on this analysis, legal certainty in determining the judicial competence of TNI soldiers who commit general crimes has not been fully realized in terms of clarity, consistency, and predictability of the judicial forum. Article 65 of the TNI Law provides a clear direction towards general justice for general crimes, but its implementation is placed within the transitional framework of Article 74, which maintains Law 31/1997. At the same time, Article 9 of Law 31/1997 still provides the basis for military justice competence based on the perpetrator's status as a soldier.

Therefore, the problem of legal certainty in this case lies not in the absence of a legal basis, but in uncertainty about which judicial forum to use. Positive law has provided norms regarding competence, but the relationship among these norms has not yet yielded a fully clear and predictable construction. This situation indicates that the main issue is not simply the need to create new norms, but rather the need to resolve the tension between the direction of competence renewal under Article 65 of the TNI Law and the continuation of the regime under Law 31/1997, as set out in Article 74. With this construction, legal certainty requires the existence of a forum that can be determined clearly, consistently, and predictably based on the character of the crime committed. As long as the transitional regime maintains the old competence basis, without the institutional transformation accompanying the amendment to Article 65, determining the competence of soldiers who commit general crimes still raises the problem of legal certainty.

CONCLUSION

The regulation of judicial competence for TNI soldiers who commit general crimes shows a shift from subject-based jurisdiction in Law Number 31 of 1997 to offense-based jurisdiction through Article 65 paragraph (2) of Law Number 34 of 2004 concerning the TNI. Article 65 directs that general crimes committed by soldiers be tried in general courts, while military crimes remain within the authority of military courts. However, Article 74 of the TNI Law maintains the validity of Law 31/1997 until the enactment of the new Military Court Law, so the change in competence has not yet fully come into operational effect. This situation raises legal certainty issues, not because there is no legal basis, but because there are two normative bases for determining the judicial forum. The existence of Articles 65, 74, and 9 of Law 31/1997 raises questions about the clarity, consistency, and predictability of judicial competence. Article 74, which initially served as a transitional provision, has remained in effect for a long time and continues to maintain the old competence regime. Therefore, a legal framework is needed to provide clear and predictable boundaries of competence between general and military courts for soldiers who commit general crimes.

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