

Comparison of the Indonesian Military Legal System with the Malaysian Military Legal System

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ABSTRACT

This study addresses the problem of how differences in legal traditions influence the structure and enforcement of military law in Indonesia and Malaysia. It aims to examine and compare the legal foundations, institutional structures of military courts, and the characteristics of law enforcement applied to members of the armed forces in both countries. The research employs a normative juridical method with a comparative law approach by analyzing statutory regulations, particularly Law Number 31 of 1997 on Military Courts in Indonesia and the Armed Forces Act 1972 (Act 77) in Malaysia, as well as relevant legal literature and doctrines. The findings reveal that the principal differences between the two systems derive from their respective legal traditions—Civil Law in Indonesia and Common Law in Malaysia—which shape the organization of military courts, jurisdictional design, and procedural mechanisms for adjudicating military offenses. Indonesia relies on a codified and hierarchical military judicial structure, whereas Malaysia integrates common law principles within its court-martial system. Nevertheless, both systems share a fundamental objective, namely maintaining discipline, hierarchy, and command effectiveness within military institutions. In conclusion, despite structural and procedural distinctions, the military legal systems of Indonesia and Malaysia pursue similar normative goals. This study contributes to the development of comparative military law and offers a reference for strengthening military legal reform in Indonesia in alignment with the principles of the rule of law, military professionalism, and legal supremacy.

Introduction

The military is a state institution that historically and functionally has a strategic role in maintaining sovereignty, defense, and national security (Kariawan et al., 2022). In legal studies, the military is understood not only as an armed force, but also as a subject of law subject to the national and international legal systems. Military law is basically a special branch of law that regulates internal life, discipline, and jurisdiction over criminal acts committed by military personnel as part of the country's judicial system (Saragih et al., 2025). Military law differs from general criminal law because its context, purpose, and function prioritize internal military order while ensuring the rule of law in the structure of armed organizations (Lubis et al., 2021). Therefore, the understanding of the military legal system must consider historical, substantive, and structural aspects in accordance with the principle of the rule of law.

In Indonesia, military criminal law has long historical roots dating back to the Dutch colonial

period through the *Wetboek van Militair Strafrecht* which later became the basis for the establishment of military courts after independence (Courtesy of 2021). After the proclamation, the establishment of military justice institutions began with Law No. 7 of 1946 and Law No. 8 of 1946 which established the Military Court and the military criminal procedure law, which then underwent several changes throughout the course of national legal history until it was recodified in Law No. 31 of 1997 concerning Military Justice (Rahayu & Triadi, 2025). This law regulates the subject of military law, jurisdiction, and procedures for military criminal trials that are in force to date, as well as an instrument for enforcing soldiers' discipline and accountability within the framework of national law. This development is also in line with efforts to strengthen the rule of law in the military environment, although criticism of jurisdictional dualism and the challenge of integration with the general judiciary still emerge in national academic studies.

Meanwhile, the military legal system in Malaysia developed in the Common Law tradition inherited from the British colonial period. The main foundation of the system is the Armed Forces Act 1972 (Act 77) which is the central regulation in regulating discipline, offenses, and the mechanism of military trials (court-martial). Military judicial actors in Malaysia are within an institutional framework that is relatively integrated with common law principles, including the use of precedent and interpretive flexibility by military judges (Anwar et al., 2024). This approach is different from the Indonesian system which prioritizes codification and strict juridical limits based on written laws. These differences in legal traditions substantively and methodologically influence the institutional design, procedures, and philosophical foundations behind each country's military law enforcement.

The study of Indonesian military law in the post-1998 reform era has highlighted many issues of the rule of law, military professionalism, and conformity with the principles of constitutional democracy. Several studies emphasize that the independence of the military judiciary, the limitation of jurisdiction over general crimes, and the application of the principle of equality before the law are important topics in the discourse of military law in Indonesia (Parningotan, 2020; Saman & Dahari, 2021). For example, the conflict of norms between the Military Justice Law and the TNI Law causes TNI members who commit general crimes to still be tried in military courts, even though the principle of equality before the law requires the handling of general crimes in the general courts. This perspective suggests that military criminal jurisdiction is not just a matter of legal technicality, but is closely related to institutional legitimacy and public trust in the national justice system.

The comparison between Indonesia and Malaysia in the military legal system has high relevance both academically and practically. In the context of ASEAN and dynamic bilateral relations, the harmonization of the principles of military professionalism and the rule of law is an important issue (Rini & Suprpto, 2025). On the academic side, there is a research gap in the literature that comprehensively compares how the Civil Law and Common Law traditions affect the conception, structure, and practice of military law in each country. Most previous research has examined Indonesian or Malaysian military courts separately; Studies that conduct cross-jurisdictional analysis in a comparative framework are still limited (Saragih et al., 2025).

On this basis, this study formulates the main problems: how the differences in the national

legal system (Civil Law vs Common Law) affect the institutional design, jurisdiction, and mechanism of military law enforcement in Indonesia and Malaysia; and the extent to which the two systems are aligned with the principles of the rule of law, the rule of law, and military professionalism. The novelty of the research lies in a comparative approach that not only describes the regulations of each country, but also analyzes the philosophical and normative implications of the differences in legal traditions on the enforcement of military justice. This research is expected to make an academic and practical contribution to the development of military law, especially as an evaluation material for military law reform in Indonesia to further meet the principles of constitutional democracy and institutional accountability.

Methods

This study uses a normative juridical method with a comparative law approach to analyze the regulatory framework and application of laws related to the protection of victims of domestic violence. The normative juridical approach was chosen because this study focuses on the study of written legal norms, legal principles, and doctrines that govern the handling and protection of victims, without collecting field data (Siems, 2018; Zweigert & Kotz, 2019). Analysis was carried out on laws and regulations as primary sources of law, legal literature and journal articles as secondary sources of law, as well as legal dictionaries and encyclopedias as tertiary sources of law.

The comparative legal approach is applied systematically by comparing the arrangements and mechanisms for the protection of victims of domestic violence in Indonesia with several other jurisdictions that have developed a more progressive and responsive victim protection model. The aspects that are the focus of the comparison include: (1) the concept and definition of domestic violence, (2) the form of legal protection and the rights of victims, (3) law enforcement mechanisms and the role of related institutions, and (4) approaches to victim recovery. Through this comparison, this study aims to identify similarities and differences in regulation, as well as assess the strengths and weaknesses of the Indonesian legal system in the context of victim protection.

Data analysis techniques are carried out qualitatively-descriptively, using legal reasoning and legal interpretation methods, such as systematic and teleological interpretation. The results of the comparative analysis are then used to draw normative conclusions and formulate recommendations for strengthening legal policies that are more effective and oriented towards victim protection. This approach allows the research not only to map Indonesia's positive legal position, but also to make conceptual contributions through learning from legal practices in other relevant jurisdictions.

Results and Discussion

Discussion of Comparative Law of the Indonesian and Malaysian Military Legal Systems

Comparative law in this study is used as an analytical method to understand the characteristics, structure, and normative implications of the Indonesian and Malaysian military legal systems. In modern legal studies, comparative law is not understood as a stand-alone branch of law, but as a scientific method that functions to study, assess, and develop national law through comparisons across legal systems. This approach is relevant because the military legal system is a special area of law that is not only related to criminal norms and discipline, but also touches on

aspects of the constitution, rule of law, and civil-military relations in a democratic country. Therefore, a comparison of the Indonesian and Malaysian military legal systems was carried out to assess the extent to which each system is in line with the principles of the state of law and military professionalism.

Conceptually, comparative law aims to identify similarities and differences between legal systems by paying attention to the historical context, normative structure, and social functions of the law. In this context, comparisons are not intended to assess the superiority of one legal system over another, but rather to understand how differences in legal traditions—civil law and common law—affect the institutional design, jurisdiction, and mechanisms of military law enforcement. Thus, comparative law serves as an evaluative and reflective tool that allows the development of national law based on cross-jurisdictional learning.

Indonesia's Military Legal System in Civil Law Perspective

Indonesia's military legal system is deeply rooted in the civil law tradition that emphasizes codification, hierarchy of norms, and legal certainty (Muhni et al., 2025). The normative framework of Indonesian military law is built through several main legal instruments, including Law Number 34 of 2004 concerning the Indonesian National Army as amended by Law Number 3 of 2025, Law Number 25 of 2014 concerning Military Discipline Law, Law Number 31 of 1997 concerning Military Justice, and the Military Criminal Code (KUHPM). All of these regulations form a comprehensive written legal system in regulating the military's status as a legal subject, institutional authority, and military disciplinary and criminal enforcement mechanisms.

In the TNI Law, the main duties of the military are formulated in detail as stated in Article 7, which distinguishes between military operations for war and military operations other than war. This detailed formulation reflects the character of civil law that prioritizes normative certainty and restrictions of authority through law. From a constitutional law perspective, the arrangement serves to ensure that the use of military force is within the corridor of the country's laws and political decisions (Suhartanto & Febrianty, 2024). However, in practice, rigid normative formulations also have the potential to limit the flexibility of legal interpretation in the face of the threat dynamics and complexity of violations committed by military personnel.

Indonesia's military justice system is regulated in stages through the Military Court, the High Military Court, the Main Military Court, and the Military Court of Combat. This structure indicates the existence of a special jurisdiction separate from the general judiciary. In the perspective of the rule of law theory, the separation of jurisdiction aims to maintain military discipline and professionalism. However, this separation also raises an academic debate about the principle of equality before the law, especially when TNI soldiers commit general crimes that are not directly related to official duties. Thus, Indonesia's military legal system shows a normative tension between the need for internal military discipline and the demands of accountability in a democratic rule of law.

Malaysia's Military Legal System in Common Law Perspective

In contrast to Indonesia, Malaysia's military legal system developed in the common law tradition inherited from British colonialism. The main foundation of Malaysia's military legal system is the Armed Forces Act 1972 (Act 77) and its implementing regulations, including the Army Rules and other disciplinary regulations. Although the Act is a comprehensive written legal instrument, its application cannot be separated from the common law characteristics that give an important role to judicial precedent and discretion.

The Armed Forces Act 1972 is systematically drafted into several sections that regulate the formation of the Malaysian Armed Forces, membership status, appointment of officers, recruitment, violations of service, punishment, and court-martial mechanisms. The advantage of this system lies in the integration between written norms and adaptive judicial practice. Military judges in the common law system have a wider interpretive space to interpret legal provisions based on the context of the case, precedent, and substantive justice principles. This allows Malaysia's military legal system to respond more flexibly to the dynamics of lawlessness.

From an institutional perspective, Malaysia's military courts are relatively more integrated with common law principles, including the use of evidentiary standards and procedures that are in line with the civilian justice system. This condition has implications for the increasing perception of the accountability and legitimacy of the military judiciary in the eyes of the public. However, this interpretive flexibility also requires high judicial capacity and consistency in the application of precedents so as not to cause legal uncertainty.

Comparative Analysis and Normative Implications

A comparison between the Indonesian and Malaysian military legal systems shows that differences in legal traditions (civil law and common law) significantly influence the normative design and practice of military law enforcement (Nugroho et al., 2024). Indonesia's civil law system emphasizes legal certainty through clear codification and restrictions of authority, while Malaysia's common law system prioritizes flexibility and adaptability through precedent and judicial discretion. In a comparative legal perspective, these differences cannot be judged in black and white, but rather must be understood as a response to the historical, political, and social context of each country.

The normative implications of these differences can be seen in the application of the principles of the rule of law and military professionalism. In Indonesia, the rule of law is realized through strict adherence to written laws, but faces challenges in terms of public accountability and integration with the public judiciary. In Malaysia, the rule of law is realized through the application of adaptive common law principles, but depends on the quality and consistency of judicial practice. Thus, the effectiveness of the military legal system is determined not only by the completeness of the regulations, but also by the legal traditions that shape the way the law is interpreted and enforced.

Within a comparative legal framework, these findings suggest that Indonesia's military law reform can take into account lessons learned from the Malaysian system, particularly in the aspects of procedural flexibility and the integration of substantive justice principles without compromising

legal certainty. This comparative approach makes an academic contribution to the development of the study of military law while offering practical implications for the formulation of legal policies that are more accountable, professional, and in line with the principles of a democratic legal state. Here's a comparison table.

Table 1. Comparison of the Indonesian and Malaysian Military Legal Systems

Comparative Aspects	Indonesia (Law No. 31 of 1997)	Malaysia (Armed Forces Act 1972)
Basic Legal System	Civil Law	Common Law (Anglo-Saxon)
Composition of the Court	Tiered, including the Military Court (for cases of soldiers with the rank of Captain and below), the High Military Court (for soldiers with the rank of Major and above, and the appellate examination), the Main Military Court, and the Military Court of Combat.	Using the <i>Court-Martial</i> system which is established on an <i>ad hoc</i> basis as needed, as well as the <i>Court-Martial Appeal Court</i> at a certain level.
The Peak of Judicial Power	Supreme Court, where the military judiciary is under one roof of national judicial power.	The <i>Federal Court</i> as the highest court.
Jurisdiction (Defendant)	Members of the TNI who violate military law and general criminal acts, including through connectivity mechanisms if they involve civilians, even though there is a discourse on reform so that general crimes are tried in the general court.	Members of the Malaysian Armed Forces (ATM) for offences under Act 77 as well as certain general offences.
Special Characteristics	The existence of the Inspectorate institution as a military public prosecutor and the authority of the Superior with the Right to Punish (Ankum) and Case Submission Officer (Papera) in the process of detention and submission of cases.	The court martial trial process is more reflective of common law procedure, with a strong emphasis on proof and examination at the court.

Source: Processed from Law Number 31 of 1997 concerning Military Justice and Armed Forces Act 1972 (Malaysia).

Based on Table 1, it can be seen that the differences in the parent legal system between Indonesia and Malaysia reflect the direct influence of the civil law and common law traditions on the institutional design of the military courts. Indonesia's tiered and permanent system emphasizes legal certainty and normative control, while the court-martial system in Malaysia demonstrates greater procedural flexibility. Despite this, the two countries share fundamental similarities in their emphasis on discipline, military subordination, and the existence of special jurisdiction as instruments of maintaining the command and professionalism of the armed forces. These findings confirm that structural differences do not eliminate the commonality of the normative goal, which is to maintain military effectiveness within the framework of the rule of law.

Conclusion

This study found that the differences in the traditions of the civil law system in Indonesia and the common law in Malaysia significantly affect the institutional design, jurisdiction, and law enforcement mechanisms in the military justice system. Within the framework of legal system theory and the rule of law, the Indonesian military legal system emphasizes legal certainty through strict codification and separation of jurisdictions, but faces normative challenges related to the principles of equality before the law and public accountability, especially in handling general crimes committed by soldiers. In contrast, Malaysia's military legal system shows a higher degree of flexibility due to its attachment to the common law tradition, which allows for the application of substantive justice through court-martial mechanisms that are more adaptive and integrated with common law principles.

The study also found that the use of comparative legal methods allows for a systematic and contextual analysis of the strengths and limitations of each military legal system. The scientific contribution of this article lies in the development of an integrative analytical framework that connects the theory of the legal system, the theory of the rule of law, and the practice of military justice in a comparative study of Indonesia–Malaysia. The findings of this study provide a conceptual basis for the development of military law policy and reform in Indonesia to be more accountable, professional, and in line with the principles of a democratic state of law, without neglecting the need for discipline and effectiveness of military institutions.

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