

Harmonization of the Military Criminal Code with the New Criminal Code: The Dichotomy of Penal Systems and Its Implications for Military Discipline

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Abstract

Indonesia's criminal law reform reached a monumental milestone through the shift from a colonial penal paradigm toward a modern, restorative, and human rights oriented national legal framework. However, this systemic transformation exposes a profound normative friction with *jus militare*, where institutional integrity and operational readiness depend on a rigid disciplinary structure. The enactment of the New Criminal Code (Law No. 1/2023) significantly transforms general penal policy, urgently necessitating a structural and conceptual harmonization with the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer* or KUHPM). This research aims to analyze the challenges of harmonizing the KUHPM with the New Criminal Code, examine the dichotomy between general and military penal systems, and evaluate its implications for military discipline. Employing normative legal research with statutory and conceptual approaches, the study reveals that the penal dichotomy creates legal fragmentation, particularly regarding the integration of novel penal sanctions, such as community service and supervision orders into the strict hierarchy of military justice. Furthermore, inconsistencies in general penal principles risk blurring the boundaries between purely military offenses and internal disciplinary infractions. Future harmonization policies must reconcile modern criminal law philosophy with the *lex specialis* doctrine and command hierarchy, ensuring human rights protections without compromising military discipline and operational readiness.

Keywords

Legal Harmonization; New Criminal Code; Military Criminal Code; Penal Dichotomy; Military Discipline



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INTRODUCTION

The enactment of Law No. 1 of 2023 on the Criminal Code marks a historic milestone in the evolution of Indonesia's national legal architecture. Decades after securing political independence, the nation successfully dismantled the archaic colonial penal paradigm inherited from the Dutch *Wetboek van Strafrecht* (WvS). This monumental legislative reform reflects a fundamental shift toward a codification

rooted in *Pancasila*, constitutional democracy, and contemporary jurisprudence. Rather than relying primarily on traditional punitive measures, the new criminal law framework introduces a modern penal orientation centered on human rights protections, offender rehabilitation, and restorative justice mechanisms designed to heal social disruption.

This paradigm shift fundamentally alters the philosophical objectives of punishment within the general criminal justice system. Under the New Criminal Code, imprisonment is no longer viewed as the sole or primary instrument of state retribution. Instead, the statutory introduction of alternative sanctions, such as community service sentences, supervisory orders, and tailored diversionary processes, aims to resocialize offenders while upholding human dignity. By balancing justice for victims, society, and perpetrators, the modern national penal policy seeks to minimize institutionalization and mitigate the systemic flaws inherent in purely retributive penal regimes.

However, the universal application of this modernized penal philosophy encounters profound conceptual resistance when confronted with *jus militare*, the specialized legal system governing the armed forces. Military criminal law operates under a distinct doctrine shaped by the imperative of national defense, unit cohesion, and combat effectiveness. Within military institutions, discipline is not merely an administrative virtue but an indispensable prerequisite for operational capability. Consequently, military penal policy historically relies on strict deterrence, swift adjudication, and uncompromising enforcement of duty to maintain the command hierarchy and preserve battlefield readiness.

This creates an inescapable philosophical confrontation between general criminal jurisprudence and military legal doctrine. While the national penal policy moves toward leniency, rehabilitation, and non-custodial sanctions, the military justice framework demands absolute obedience, subjection to authority, and rigor to deter misconduct. Integrating community-oriented or rehabilitative sanctions into the military apparatus risks compromising the chain of command and undermining the psychological conditioning required for armed conflict. Consequently, the intersection between the New Criminal Code and the Military Criminal Code (KUHPM) reveals an acute normative friction that threatens the cohesion of the national legal system.

In light of these emerging legal realities, this research examines the complex normative and structural challenges arising from the coexistence of these two systems. The primary inquiry centers on how the statutory innovations of the New

Criminal Code can be harmonized with the existing norms of the KUHPM without generating systemic legal uncertainty. Furthermore, this study investigates the precise nature of the penal dichotomy that emerges between the general courts and military tribunals, particularly regarding the theoretical and practical divergence in sentencing philosophies, statutory interpretation, and procedural execution.

Crucially, this research addresses the practical implications of normative misalignment for soldierly discipline and military operational readiness. The potential infiltration of general criminal law principles into military jurisdiction threatens to blur the distinction between purely military offenses and internal disciplinary infractions. If the boundaries between criminal acts and military breaches become obscured, or if sentences are perceived as incompatible with military order, command authority may be eroded. Understanding these operational risks is essential for preventing structural fragmentation within the Indonesian National Armed Forces (*Tentara Nasional Indonesia* / TNI).

To address these critical vulnerabilities, this study aims to systematically analyze the potential for legal fragmentation resulting from uncoordinated statutory reform. By evaluating the structural and philosophical friction between Law No. 1 of 2023 and the KUHPM, the research seeks to delineate the boundaries of general penal applicability within military jurisprudence. It provides a comprehensive analysis of how human rights principles and modern penal ideals can be accommodated within a legal subsystem whose foundational purpose remains the maintenance of combat readiness and institutional integrity. Ultimately, the broader significance of this research lies in formulating a strategic concept of legal reconciliation between general criminal law and military law. By offering a rigorous doctrinal assessment, this study aims to preserve the essential *lex specialis derogat legi generali* doctrine that protects the unique status of the TNI. The findings intend to guide future legislative reform, ensuring that national criminal law modernization advances humanized justice without compromising the rigor, command hierarchy, and operational effectiveness vital to national defense.

METHODS

The research design outlines a structured epistemological framework and methodological architecture aimed at evaluating the normative harmonization between general criminal law and military penal jurisprudence. The study adopts a doctrinal legal methodology grounded in normative jurisprudence, prioritizing the qualitative appraisal of statutory provisions, foundational legal principles, and jurisprudential constructs. By emphasizing structural legal cohesion, this design

facilitates a heuristic inventory, normative synchronization, and critical evaluation of existing statutory provisions. Consequently, it provides a rigorous analytical foundation for diagnosing systemic frictions, statutory lacunae, and conceptual antinomies arising at the intersection of general criminal law reform and military law.

To execute a comprehensive inquiry, the research is operationalized through two complementary analytical paradigms: the statutory approach and the conceptual approach. The statutory approach undertakes an exegesis of positive legal instruments, specifically analyzing Law No. 1 of 2023 on the Criminal Code, the Military Criminal Code (KUHPM / Law No. 39 of 1947 alongside its regulatory apparatus), the Military Courts Law, and the Military Discipline Law. Concurrently, the conceptual approach interrogates the substantive legal doctrines underlying these regimes, critically evaluating the maxim *lex specialis derogat legi generali*, the doctrine of command authority, the classification of purely military offenses, and contemporary theories of penal state intervention.

The evidentiary foundation of this inquiry relies on a structured hierarchy of primary and secondary normative materials. Primary legal materials comprise authoritative statutory enactments, codifications, and regulatory frameworks governing general criminal liability and military justice administration. Secondary legal materials consist of legal treatises, authoritative commentaries on military jurisprudence, contemporary peer-reviewed literature, official academic drafts, and doctrinal research papers. These secondary sources afford theoretical depth and evaluative context regarding the integration of modern rehabilitative penal philosophies into the structurally rigid framework of military legal administration.

The compiled legal corpus is subjected to a qualitative-prescriptive analysis geared toward formulating actionable legal policy recommendations. This process deploys established legal hermeneutics and canons of statutory interpretation, specifically grammatical, systematic, and teleological modes of construction to resolve norm collisions and elucidate legislative intent. By scrutinizing statutory context, internal structural harmony, and ratio legis, the analysis synthesizes disparate penal principles into a coherent policy model, reconciling national criminal law modernization with the imperative maintenance of military discipline.

FINDINGS AND DISCUSSION

Harmonization Challenges and the Penal System Dichotomy

The legislative enactment of Law No. 1 of 2023 on the Criminal Code

introduces a profound systemic shift in Indonesia's national penal landscape, establishing an acute ideological and structural dichotomy when juxtaposed against the Military Criminal Code (KUHPM). At the center of this legislative friction lies a fundamental disparity in penal philosophy. The New Criminal Code codifies a modern, humanistic, and restorative paradigm that prioritizes rehabilitative, individualized, and non-custodial sentencing mechanisms, consciously steering national criminal policy away from archaic retributive measures. Conversely, military penal jurisprudence, codified within the specialized framework of the KUHPM, remains resolutely anchored in a retributive-deterrent model. This specialized penal system is engineered not merely to correct individual delinquency, but primarily to enforce absolute institutional order, guarantee swift general deterrence, and preserve uncompromising combat readiness. Consequently, the convergence of these two opposing legal philosophies creates severe normative friction, as the civilian trend toward lenient, rehabilitative remedies directly confronts the rigorous disciplinary demands required of active military personnel.

This fundamental philosophical divergence stems from the distinct functional mandates separating civilian society from the military establishment. General criminal law aims to preserve social harmony while facilitating the reintegration of offenders into civil society through rehabilitative and restorative interventions. In stark contrast, military law operates under the doctrine of *jus militare*, wherein individual liberties and procedural entitlements are necessarily subordinated to unit cohesion, operational readiness, and absolute obedience to command authority. Within a military context, punishment serves an indispensable collective imperative: it reinforces the absolute authority of military orders, deters insubordination, and maintains the hierarchical integrity of the chain of command. Substituting traditional military penalties, such as military confinement, reduction in rank, or dishonorable discharge with rehabilitative alternatives risks eroding the deterrent threshold essential to battlefield effectiveness. Should soldiers perceive that criminal breaches incur negligible consequences or overly lenient civil remedies, the foundational ethos of military discipline could be severely compromised, ultimately endangering the operational efficacy of the Indonesian National Armed Forces (TNI).

Beyond these abstract philosophical conflicts, the technical and legal integration of novel statutory sanctions introduced by the New Criminal Code, specifically community service punishment and supervisory or probation orders presents formidable operational challenges when applied to active duty military personnel. Formulated primarily to address civilian delinquency and mitigate prison overcrowding, these non-custodial alternatives operate under assumptions of civilian liberty and municipal oversight. However, projecting community service or supervised probation into the rigid framework of military law generates profound procedural antinomies. The military justice administration is governed by a

specialized procedural architecture, wherein commanders exercise statutory authority as superiors with disciplinary powers and designated officers act as authorities exercising prosecutorial discretion. Implementing non-custodial civilian sentences within this specialized matrix creates intricate jurisdictional impasses regarding administrative oversight, supervisory mandates, and the practical execution of sentences during active military service.

Critically, executing community service or supervisory orders for active-duty personnel threatens to disrupt the internal command hierarchy, compromise operational security, and demean the institutional dignity of military units. Forcing an active soldier to perform public community service under external civilian administration creates an irreconcilable conflict of command authority, effectively usurping a commanding officer's statutory jurisdiction over subordinate personnel. Furthermore, subjecting uniformed or identified active personnel to public penal labor or civilian supervisory surveillance exposes soldiers to public degradation, thereby eroding the institutional prestige and moral authority of the armed forces. Operational security is similarly endangered; subjecting military personnel who possess sensitive tactical knowledge or belong to specialized combat units to civilian managed probation could inadvertently expose operational routines, military infrastructure, or classified protocols to unauthorized civilian entities. Consequently, without tailored statutory modifications, non-custodial general criminal sanctions cannot be transplanted into active military environments without inflicting substantial institutional damage.

Ultimately, the challenges surrounding the harmonization of Law No. 1 of 2023 with the KUHPM derive from both foundational conceptual contradictions and concrete procedural impasses. The sharp dichotomy between general rehabilitative philosophy and military retributive deterrence highlights the dangers of applying national criminal law reforms indiscriminately across specialized legal subsystems. If the legislature attempts to impose novel civilian penal options onto military personnel without accounting for the unique demands of military service, it risks inducing legal fragmentation, eroding command authority, and compromising national defense capabilities. Resolving this complex penal dichotomy requires a sophisticated legislative strategy, one that respects the *lex specialis derogat legi generali* doctrine protecting military jurisprudence, while meticulously designing intra-institutional adaptations of modern penal mechanisms that uphold human rights without undermining military discipline, operational secrecy, or unit readiness.

Implications for Military Discipline and the Demarcation of Offenses

The systemic application of general criminal principles enshrined in Law No. 1 of 2023 introduces profound legal complexities regarding the traditional classification of offenses within military jurisprudence. Historically, military law maintains a

rigorous conceptual distinction between criminal acts governed by penal statutes and non-criminal disciplinary infractions governed by military administrative regulations. However, the infiltration of generalized, modern criminal law principles, such as expanded judicial forgiveness (*rechterlijk pardon*), decriminalization mechanisms, and restorative diversion threatens to erode these established statutory boundaries. This normative convergence risks generating substantial legal ambiguity, specifically by blurring the demarcation line between purely military offenses and internal military disciplinary breaches. Because military criminal law is designed around the existential demands of national security, any analytical opacity regarding what constitutes a true criminal offense versus a minor disciplinary infraction compromises the predictability, consistency, and normative integrity of the military justice system.

Purely military offenses, such as desertion, insubordination, and direct disobedience of lawful orders, represent statutory constructs unique to *jus militare*. Unlike general crimes that cause direct harm to civilian society or private property, purely military offenses target the internal order, hierarchy, and operational readiness of the armed forces. Under traditional military doctrine, acts of insubordination or unauthorized absence are treated with uncompromising severity due to their potential to dismantle unit cohesion and catalyze operational failure during armed conflict. However, if judges and legal scholars evaluate these specialized military offenses using the broad subjective parameters and humanized principles of the New Criminal Code, there is a distinct danger of mischaracterizing grave military crimes as mere administrative or disciplinary breaches. Conversely, minor disciplinary slipups could be subjected to arbitrary criminalization if clear statutory criteria are lacking, thereby confusing the jurisdictional mandate of military tribunals and administrative commanders.

This jurisdictional blurring carries severe operational repercussions for command authority and the enforcement of soldierly discipline. In the military hierarchy, commanding officers acting as superiors with disciplinary powers rely on statutory clarity to determine whether a subordinate's misconduct warrants summary administrative discipline or formal criminal prosecution through the military prosecutor. If the boundary between a military crime and a disciplinary violation becomes obscured by conflicting general penal principles, commanders face acute legal uncertainty when exercising their disciplinary jurisdiction. Applying restorative principles or non-custodial leniency to acts of active insubordination or desertion under the guise of general penal reform risks eroding the psychological deterrent necessary to maintain battlefield obedience. When subordinates perceive command directives as negotiable or subject to lenient civil style mediation, the structural foundation of command authority collapses, directly undermining the operational readiness and combat capability of the Indonesian National Armed

Forces (TNI).

Compounding this jurisdictional confusion is the acute risk of penal disparity, which threatens the constitutional guarantee of equal treatment before the law for military personnel. Penal disparity arises when active soldiers who commit general crimes face significantly harsher or structurally unequal legal outcomes compared to civilian offenders committing identical offenses. This disparity is created by the statutory lag between the modernized general penal code and the outdated Military Criminal Code (KUHPM). While Law No. 1 of 2023 provides civilians with access to progressive sentencing alternatives—including community service, probation, and judicial pardon military courts operating under unharmonized procedural and substantive rules may remain bound to traditional custodial penalties. Consequently, a soldier and a civilian committing the exact same general offense could experience radically divergent legal consequences solely due to the soldier's institutional status, generating systemic unfairness within the national legal order.

The manifestation of this penal disparity is particularly pronounced in the absence of explicit transitional provisions and statutory synchronization mechanisms between the general and military justice systems. If the legislature fails to establish clear statutory bridges harmonizing the New Criminal Code with military penal procedure, military judges will be trapped in a normative dilemma. They must choose between applying the legacy retributive provisions of the KUHPM to preserve military order or directly applying the humanized sentencing options of Law No. 1 of 2023 to protect the soldier's constitutional rights. Without statutory guidance, this dilemma leads to arbitrary judicial decision-making across different military tribunals. Some military courts might grant modern non-custodial options to soldiers, while others continue imposing rigid custodial sentences for identical offenses. This lack of uniform application creates deep legal unpredictability, destabilizes the administration of military justice, and fosters a pervasive perception of institutional injustice among service members.

The implications of Law No. 1 of 2023 for military discipline and the classification of offenses highlight the urgent need for comprehensive statutory alignment. The dual threats of jurisdictional blurring between *militaire delicten* and disciplinary infractions, alongside systemic penal disparity for general crimes, underscore that national legal modernization cannot treat the military subsystem as an afterthought. To resolve these challenges, future legislative reform must establish precise statutory boundaries that preserve the unique, uncompromising nature of purely military offenses while creating clear transitional mechanisms for general crimes committed by military personnel. Only through explicit statutory synchronization can the national legal framework uphold the constitutional principle of equality before the law without degrading the command hierarchy, institutional discipline, and operational readiness vital to national defense.

Legal Reconciliation Strategies: Future Harmonization Policy

In order to bridge the significant legal divide arising from Law No. 1 of 2023, a coherent policy mechanism must be established by future lawmakers to align general penal standards with military jurisprudence. Addressing this statutory divide requires moving beyond rigid legal dogmatism toward a harmonized policy framework that respects both the modernizing trajectory of national criminal reform and the unique institutional imperatives of the armed forces. A sustainable reconciliation model must navigate the complex interaction between national penal policy and military law without creating jurisdictional vacuums or eroding military discipline. Consequently, the future legislative strategy hinges upon two foundational pillars: the proportional application of the *lex specialis principle* and an operational readiness based model of penal adaptation.

The first critical dimension of this reconciliation strategy entails recalibrating the application of the maxim *lex specialis derogat legi generali*. Traditionally, this canon has been invoked as an absolute shield to insulate the military justice system from general legal reforms, resulting in statutory isolation and lingering penal disparities. However, a modern legislative policy must adopt a proportional interpretation of *lex specialis*, recognizing that military law's special status is justified only to the extent necessary to preserve military functionality and unit discipline. Rather than treating military law as entirely autonomous, the legal framework must establish a clear threshold defining when general penal innovations yield to specialized military rules and when general legal protections must extend to military personnel.

Establishing this proportional boundary requires a clear statutory taxonomy distinguishing purely military offenses from general criminal acts committed by active service members. For purely military offenses, such as desertion or insubordination, the specialized retributive-deterrent provisions of the Military Criminal Code (KUHPM) must maintain absolute precedence under the *lex specialis* doctrine to safeguard command authority. Conversely, when military personnel commit general crimes that lack a direct nexus to tactical duties or military operational integrity, the general penal principles of Law No. 1 of 2023 should apply proportionally. This statutory delineation ensures that humanized sentencing options, such as diversion or probation, protect soldiers' constitutional rights without compromising military discipline.

Complementing the proportional application of *lex specialis* is the imperative

to construct an operational readiness based harmonization model. This approach dictates that any integration of modern general criminal law mechanisms into military jurisprudence must be filtered through the foundational mandate of military preparedness and combat efficacy. Legal harmonization cannot be treated as a passive, verbatim transplantation of civilian legal concepts into military statutes. Instead, every proposed reform must be rigorously evaluated for its impact on unit cohesion, operational security, and the psychological readiness of troops. By anchoring legal adaptation to the operational realities of soldierly life, the legislature can minimize normative friction while enhancing the legitimacy of military justice.

In practical terms, an operational readiness-based model requires customizing novel non-custodial sanctions, such as community service and supervisory orders to align with the structured life of military personnel. Rather than subjecting soldiers to civilian administrative oversight or public penal labor, which risks undermining command authority and institutional prestige, these sanctions should be adapted for internal military execution. For instance, military-managed community service could involve specialized maintenance, infrastructure development, or humanitarian assistance within military installations under the supervision of military authorities. Similarly, probationary orders could be administered through internal military command structures, preserving the chain of command while fulfilling the rehabilitative objectives of modern penal policy.

Achieving this tailored integration necessitates comprehensive legislative action, specifically through the systematic revision of the KUHPM and the Military Courts Law. The legislature must enact explicit statutory bridges and transitional provisions that detail how the general principles of Law No. 1 of 2023 interface with military procedural and substantive law. Updating these legacy military statutes will eliminate the current statutory vacuum and provide military judges with clear statutory authority to impose modernized, non-custodial sentences when appropriate. Furthermore, statutory harmonization ensures uniform judicial interpretation across military tribunals, effectively eliminating arbitrary sentencing disparities and upholding the rule of law within the armed forces.

Ultimately, a successful legal reconciliation strategy bridges the gap between progressive national penal goals and the vital demands of national defense. By combining a proportional application of the *lex specialis* doctrine with an operational readiness based adaptation framework, Indonesia can establish a balanced, modern military justice system. This dual approach guarantees that the humanization of

criminal law enhances individual constitutional protections for service members without weakening the command hierarchy or combat readiness of the Indonesian National Armed Forces. Through deliberate legislative reform, the national penal architecture can achieve structural harmony, reinforcing both the rule of law and the operational integrity of the military.

CONCLUSION

In conclusion, the enactment of Law No. 1 of 2023 on the Criminal Code creates a profound normative and philosophical dichotomy when juxtaposed against the Military Criminal Code (KUHPM). Bridging the gap between a modern humanistic penal policy and the rigid demands of military order poses an immediate statutory challenge. Without swift, deliberate, and measured legal harmonization, this structural misalignment risks triggering pervasive legal uncertainty and fragmentation in the application of penal sanctions. Most critically, an uncoordinated transition threatens to erode the strict disciplinary standards and command hierarchy that serve as the indispensable pillars of military cohesion and operational readiness within the Indonesian National Armed Forces.

To resolve this systemic friction, the primary legal policy recommendation is to accelerate the comprehensive revision and modernization of the KUHPM. Lawmakers must actively update military penal statutes to align with the progressive principles of the New Criminal Code while scrupulously preserving the core doctrines of *jus militare* and *lex specialis derogat legi generali*. This statutory reform must establish clear jurisdictional boundaries between general crimes and purely military offenses, ensuring that the humanization of national penal policy does not dismantle the specialized legal framework necessary to maintain combat effectiveness and institutional integrity.

Additionally, relevant executive and military authorities must draft specialized implementation regulations to provide technical guidelines for executing alternative non-custodial sanctions within the military justice system. Mechanisms such as community service and supervisory orders cannot be transplanted blindly into military life; instead, they must be meticulously tailored to the institutional norms, operational security demands, and internal administrative structures of the TNI. By establishing clear procedural protocols administered under military command authority, the legal system can successfully operationalize modern rehabilitative remedies without degrading soldierly discipline or compromising unit readiness.

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