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## **Legal Analysis of the Expansion of the Placement of Active-Duty Military Personnel in Ministries/Agencies and Civil Service Positions**

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### **Abstract**

This research juridically analyzes the expansion of active of the Indonesian National Army placement in civilian positions under Article 47 of Law No. 3/2025, which raises concerns over the erosion of the 1998 Reformasi spirit that mandated civilian supremacy and strict military-civilian separation. This research aims to answer two problem formulations: first, analyzing the juridical implications of expanding the placement of active TNI soldiers in ministries, institutions, and civilian positions; and second, analyzing such expansion based on the principles of civil supremacy. The methods used are normative legal research with legislative and conceptual approaches, as well as descriptive qualitative data analysis. The results of this study show that the expansion of unconditional placement, resignation or retirement from active service is fundamentally contrary to the principles of civil supremacy and the democratic rule of law. The juridical implications are internal conflicts of norms that reduce legal certainty, the creation of dualism of legal status (military and civil), violations of the principle of meritocracy and equal treatment before the law, and threats to the independence of judicial/law enforcement institutions such as the Supreme Court and the Attorney General's Office. The reconstruction of the norms of Article 47 of the TNI Law is suggested by requiring every soldier who wants to occupy civilian positions to give up their active service status (retire or resign) for the sake of upholding the principle of one man, one job, one loyalty.

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## **INTRODUCTION**

The sovereignty of the people and the constitutional foundation of the Unitary State of the Republic of Indonesia place civil supremacy as the main pillar in the post-1998 Reform constitution, which is explicitly affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), which demands a strict limitation of power, the enforcement of the principle of public accountability, and a clear separation of roles and functions between state defense institutions, namely the Indonesian National Army (TNI), with a civilian government structure. The establishment of a democratic political order depends on the obedience of every element of the state, including military institutions, to submit fully to the legitimate civilian political authority, thus ensuring that public decision-making and strategic policy of the state are always oriented towards the interests of the people and are not dominated by militaristic approaches or closed hierarchical command.

In fact, the constitutional mandate given to the Indonesian National Army (TNI) has been regulated in Article 30 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which fundamentally stipulates that the TNI as a state instrument is tasked with defending, protecting, and maintaining the integrity and sovereignty of the state. This mandate requires military professionalism from all forms of intervention or active involvement of soldiers in

administrative, political, and civilian government functions, to prevent the recurrence of the practice of Dual Functions of the Indonesian Armed Forces which has injured the principles of democracy and civilian supremacy in the past. The involvement of active soldiers in civilian positions, even under the pretext of the need for professionalism or special expertise, has the potential to directly erode the neutrality and focus of the TNI institution, as well as reduce the responsibility of soldiers to their main duties, thereby threatening the functional integrity of the TNI as a fortress of state defense (Quddus & Firdaus, 2025).

Deep concerns regarding the potential decline of the spirit of reform found its relevance through the ratification of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 concerning the Indonesian National Army (TNI Law), especially through the enactment of the provisions of Article 47 paragraph (1) and paragraph (2). Article 47 paragraph (1) explicitly provides flexibility for active soldiers to occupy positions in certain ministries/institutions whose scope has been significantly expanded, including strategic institutions, even touching judicial and law enforcement institutions such as the Supreme Court and the Prosecutor's Office of the Republic of Indonesia, without any need for the soldier concerned to relinquish his active service status as a soldier. So that the placement of active TNI soldiers in civilian positions has become an issue that continues to cause debate in Indonesia. In fact, during the 1998 reform, the direction of changing the constitutional system emphasized the separation of military and civilian functions (Salsabil & Nasihuddin, 2025).

Strictly *speaking*, the 1945 Constitution of the Republic of Indonesia and the spirit of reform require strict restrictions on the role of the TNI in the state defense sector, with civilian supremacy as a non-negotiable philosophical and operational foundation. However, in terms of *das*, Article 47 paragraph (1) of the 2025 TNI Law is the opposite, by opening the expansion of civilian positions for active soldiers outside the defense sector, which can threaten the principle of civil supremacy. The entry of active military elements into strategic civilian institutions without the need for resignation from active military service, creates a situation in which the military command hierarchy has the potential to intervene in civilian decision-making processes that should be transparent and accountable to the public. This condition not only creates institutional disharmony, but also has the potential to restore the shadow of militaristic politics, which is contrary to the commitment of the democratic legal state to uphold the principle of proportional separation of powers (Alsarhan & Alsarhan, 2025; Bulman-Pozen & Seifter, 2023; Henckels, 2017).

The juridical implications of the expansion of the placement of active soldiers in ministries/institutions and civilian positions, which are regulated in the provisions of Article 47 paragraph (1) of the TNI Law which allows placement in certain institutions without the condition of resignation, stand contradictory to Article 47 paragraph (2) of the TNI Law which requires resignation or retirement to occupy "other" civilian positions, as well as Article 47 paragraph (3), paragraph (4) and paragraph (5) of the TNI Law which regulates the placement of soldiers are subject to the administrative provisions applicable within ministries and institutions, carried out according to the needs of the organization of ministries and institutions, and career development of soldiers who occupy certain positions is carried out by the Commander through coordination with the leaders of ministries and institutions (*cawe-cawe*) (Tempo, 2025a).

The expansion of the deployment of active duty soldiers also has serious implications for

the principle of equal treatment before the law and the spirit of meritocracy in the civilian bureaucracy. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees that everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law. However, norms that provide alternative flexibility for active soldiers to fill strategic civilian positions without having to go through an open and competitive selection mechanism like the State Civil Apparatus (ASN) or other civilian professionals, factually create unfair privileges. This privilege reduces the opportunity for civilians, including college graduates who have been academically prepared for such positions, to occupy public positions based on their qualifications and competencies.

In addition, from the perspective of civil supremacy, the provision highlights structural threats to democratic governance (Ekiert et al., 2021). Civil supremacy definitively requires that the ultimate authority in policy-making and oversight of all state instruments, including the military, be in the hands of democratically elected civilian representatives. The placement of active soldiers in civilian institutions without the release of military status will intrinsically bind the official to a military chain of command that is hierarchical, closed, and unfamiliar with the mechanisms of civilian public accountability, thus potentially giving rise to a vague dualism of loyalty and accountability. This condition is prone to give rise to conflicts of interest, especially when civilian decisions that must be taken intersect with the interests of military institutions or defense issues. In addition, a militaristic culture that tends to be closed and command-based can undermine the principles of transparency and public participation that must be upheld in a democratic civilian bureaucracy (Simanjuntak, 2023).

Another aspect of the analysis of civilian supremacy is the risk of a return to military dominance in the political and administrative realms, which is an implicit shadow of duality. Although this new norm does not explicitly repeat the doctrine of the Dual Functions of the ABRI, the expansion of the scope of civilian positions that can be filled by active soldiers in strategic institutions shows the potential for re-militarization of the civilian bureaucracy. The appointment of active soldiers to non-defense positions of a political or administrative nature, such as in intelligence agencies, disaster management, or even law enforcement, is feared to create a militaristic bias in public policy that should be answered with a civilian approach and administrative professionalism. If civilian positions are filled by actors who are still bound by the discipline and structure of military command, then the principle of checks and balances that are the key to a democratic state of law will be threatened, because civilian oversight of these sectors becomes weak (Susdarwono & Wiranta, 2025).

Several previous studies have examined similar problems in the context of civil-military relations and the placement of military personnel in civilian positions. The first research by Hilda Halnum Salsabil and Abdul Aziz Nasihuddin (2025) entitled "The Legal Politics of Active TNI Placement in Civil Positions: Between State Interests and Civil Supremacy" in the journal *Progresif* found that the legal politics behind the placement of active TNI in civilian positions are more driven by sectoral interests and the expansion of military influence than by the objective needs of the state. However, the research is still limited to legal political analysis without in-depth examining the normative juridical implications of the principle of legal certainty and equality before the law. The second research by Muh Syah Quddus and Febri Muhammad Firdaus (2025) entitled "Dualism of the Role of the TNI: How Does the New TNI Law Strengthen or Weaken the Principles of Civil Supremacy and Governance?" in *J-CEKI*

concluded that the 2025 TNI Law actually strengthens the dualism of the role of the TNI because there is no need to release active status, but the study has not specifically analyzed the implications of placement in judicial and law enforcement institutions such as the Supreme Court and the Prosecutor's Office. The third research by A. Zarkasi (2025) entitled "Filling Civil Positions by Active TNI Members in the Perspective of Laws and Regulations" in the *Limbago* journal revealed that the filling of civilian positions by the active TNI causes legal uncertainty due to the conflict of norms between laws and regulations, but the research has not formulated a systematic reconstruction of norms that are in line with the principles of civil supremacy and a democratic state of law. The three studies provide an important starting foundation, but have not comprehensively analyzed the juridical implications of the expansion of the placement of active TNI soldiers in ministries/institutions and civilian positions after the 2025 TNI Law, especially in relation to the dualism of legal status, violations of the principle of meritocracy, and threats to the independence of judicial institutions and law enforcement. Therefore, the novelty of this research lies in a systematic effort to analyze in depth the juridical implications and consequences for civilian supremacy of the expansion of the placement of active soldiers in the context of the latest TNI Law, which has not been definitively formulated in the existing legal discourse, as well as offering a concrete reconstruction of norms in the form of the necessity of releasing active status (retirement or resignation) for every soldier who wants to occupy civilian office.

Based on the overall description above, this study is a theoretical and juridical study to formulate the constitutional limits of Article 47 paragraphs (1) and (2) of the 2025 TNI Law. The theoretical studies carried out will refer to concepts such as Civil Supremacy, the Democratic Rule of Law, Military Professionalism, and Bureaucratic Meritocracy, which are the ideal framework (*das sollen*) for analyzing the applicable legal practices (*das sein*). The novelty of the results of this study lies in the systematic effort to analyze the juridical implications and consequences on civilian supremacy of the expansion of the deployment of active soldiers in the context of the latest TNI Law, which has never been definitively formulated in the current legal discourse.

Thus, the framework used in this study is to restore the consistency of the national legal system, ensure the upholding of the principle of fair legal certainty, and maintain the spirit of reform that has mandated the strict separation of military and civilian roles. Departing from the failure of the norms of Article 47 paragraphs (1) and (2) of the 2025 TNI Law to meet the standards of legal rationality, normative consistency, and the principle of substantive justice which are prerequisites of the State of Law, this study aims to answer two problem formulations, namely: 1) Analyze how the juridical implications of expanding the deployment of active soldiers of the Indonesian National Army in ministries/institutions and civilian positions?, especially those related to the principle of legal certainty and equal treatment before the law; and 2) Analyze how the expansion of the placement of active soldiers in ministries/agencies and civilian positions is reviewed based on the principle of civil supremacy? as a fundamental pillar in Indonesia's democratic legal state.

## **METHOD**

This research used a normative legal research method focusing on the analysis of Article 47 of the 2025 TNI Law. It aimed to identify relevant legal principles, doctrines, and rules to address the research questions.

The study employed statute and conceptual approaches to examine the application of the principle of civilian supremacy within the Indonesian legal and governmental system. The legal materials consisted of primary, secondary, and tertiary sources. Data collection was conducted through library research by collecting, classifying, and systematically analyzing relevant materials.

The analysis was carried out descriptively and qualitatively by relating applicable legal norms to the principle of civilian supremacy and constitutional values. The findings were expected to contribute to the development of legal scholarship and provide recommendations for policymakers to ensure that civilian supremacy remains a foundational principle in Indonesia's democratic governance.

## **RESULTS AND DISCUSSION**

### **Juridical Implications of the Expansion of the Placement of Active Soldiers of the Indonesian National Army in Ministries/Institutions and Civil Positions**

The fundamental juridical implications of Article 47 paragraph (1) and paragraph (2) of the 2025 TNI Law lie in the internal conflict of norms that can reduce the guarantee of fair legal certainty, as mandated by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This contradiction arises from the establishment of "certain positions" that can be filled by active soldiers without the condition of retirement, faced with the condition of compulsory retirement or resignation for "other civilian posts". The absence of clear legal criteria (*lex certa*) regarding the distinction between these two categories of positions results in a void of essential qualification norms, opening up space for abuse of authority by rulers that is immeasurable and cannot be objectively tested. This condition explicitly violates the principle of consistency and coherence of the legal system, creates uncertainty regarding the legal status of deployed soldiers and undermines the legislative hierarchy. The Constitution requires that any limitation of rights or the determination of obligations must be based on clear and definite regulations.

The placement of active soldiers into civilian positions without the release of active service status juridically creates a complex legal status dualism, namely the inherent status of active soldiers (subject to the Military Law and the Commander's Command) as well as the status of civilian officials (subject to the Law on State Administration and civilian leaders). This dualism has implications for conflicts of legal jurisdiction in the event of a violation or criminal act. *Lex specialis*, active soldiers are subject to military courts, but criminal acts committed in the civilian realm should be subject to the general courts. The lack of clarity in the determination of the applicable law (martial law or common law) of this act which is a combination of military and civilian functions, violates the principle of *nullum crimen sine lege* and has the potential to harm the rights of civilian citizens who are victims. This provision practically ignores the principle of separation between the general and military courts which is a reform of the security sector, thus creating a vacuum and confusion in law enforcement (Huda & Abdullah, 2024).

The juridical implications that are also in the spotlight are violations of the principle of meritocracy and the right of every citizen to have equal opportunities in government, as guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The provisions of Article 47 of the 2025 TNI Law substantively provide *unfair privileges* to active soldiers, which allows them to fill in civilian institutions through a closed military assignment mechanism, instead of through open and competitive selection in accordance with the ASN Law. The meritocratic system is the foundation of a professional bureaucracy, where appointments should be based on competence, not status. By creating an alternative path for the military, the 2025 TNI Law has the potential to discriminate against professional civilians, including civil servants who have had a career and are academically prepared, who lose the opportunity to compete fairly. This constitutional loss can threaten the integrity and credibility of the selection of public positions in Indonesia.

The expansion of placement to institutions that do not have a direct correlation with state defense (such as the Prosecutor's Office, Supreme Court, BNN) raises juridical implications in the form of serious overlapping authority. Doctrinally, the defense function is the domain of the TNI, while law enforcement, judiciary, and bureaucracy are the civilian domain. The placement of active soldiers in civilian strategic positions can blur the boundaries of such jurisdictions, where a command-based militaristic approach can replace a civilian approach based on deliberation and transparency. This overlap is prone to triggering interinstitutional conflicts, especially in the coordination of handling cases involving the military or state assets. The juridical implication is that this weakens checks *and balances* between state institutions, because one institution (Executive/Military) can structurally influence it on other independent institutions (Judiciary/Law Enforcement), undermining the principle of proportional separation of powers.

Article 47 paragraph (5) of the 2025 TNI Law which stipulates that the career development of soldiers who are placed is carried out by the Commander through coordination with the leadership of civilian institutions has juridical implications in the form of legalizing military command intervention into the realm of civil service administration. In state administrative law, career development (mutation, promotion, evaluation) is the authority of the leadership of an autonomous civil institution, subject to the ASN Law. The involvement of the Commander-in-Chief, even in the form of "coordination", substantively reduces the administrative sovereignty of civilian leaders and creates a dualism of authority. This can be interpreted as a deviation from the principle *of non-interference* with the military in civilian affairs. The soldier will be more loyal to the Commander who determines his career than the leader of the civilian institution, thus undermining the operational independence of the civilian institution (Tempo, 2025b).

From the perspective of defense law, this provision has implications for weakening the doctrine of military professionalism mandated by Article 30 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The professionalism of the TNI requires a focus on the function of national defense. By allowing the placement of active soldiers in civilian functions, there is the potential *for mission creep*, which is the expansion of military functions outside their legitimate mandate. The juridical implications are the potential deviation of the defense budget for civilian administrative needs and the reduction of soldiers' combat readiness due to the division of concentration. Modern defense law requires the TNI to be an apolitical

and professional state tool. In line with the concept of the state of law, where every policy must have a clear, rational legal basis, and consistent with higher laws and regulations. Therefore, the policy on the placement of active military in civilian positions should be strictly regulated to prevent abuse of authority (Laritmas & Rosidi, 2024).

Then another juridical implication is the increased risk of politicization of the TNI, which is explicitly prohibited by the TNI Law and the spirit of Reformasi. When soldiers actively occupy civilian positions that are political or strategic in nature, meals will become part of the executive political machine. This has the potential to erode the neutrality of the TNI institution as a whole. Legally, neutrality is a prerequisite for the TNI to carry out its duties professionally without taking sides with any political interests. By becoming an integral part of the political bureaucracy, active soldiers will be tied to the interests of political leaders, thus injuring the principle of neutrality that must be upheld by the state apparatus in the field of defense.

The placement of active soldiers in the Supreme Court (MA), even in non-judicial or administrative functions, has serious juridical implications for the independence of judicial power guaranteed by Article 24 of the 1945 Constitution of the Republic of Indonesia. The independence of the judiciary includes not only the judge, but also the entire support system. The integration of the military into the Supreme Court's structure, which has different vertical chains of command, can give rise to the perception of military intervention against the judiciary. Meanwhile, the placement of active soldiers in the Attorney General's Office (Kejagung) is a threat to the sovereignty of civil criminal law enforcement. The Attorney General's Office is a public prosecutor's institution that is obliged to operate based on the principles of transparency, accountability, and general criminal law. Active soldiers are bound by military criminal law. The incorporation of active military elements into the Attorney General's Office, especially in strategic positions, has the potential to cause militaristic bias in handling cases involving the military or national security issues.

The juridical implications of the expansion create structural disharmony with Law Number 20 of 2023 concerning the State Civil Apparatus (ASN Law). The ASN Law is designed to integrate and professionalize the civil bureaucracy under one meritocratic system. The 2025 TNI Law effectively creates a parallel personnel system, where active soldiers can fill certain civilian positions without being bound by the requirements and selection mechanisms of the ASN Law. The *lex specialis conflict* between the TNI Law (as a special rule) and the ASN Law (as a general rule of bureaucracy) leads to legal uncertainty about which should be prioritized. In the context of bureaucratic reform, the creation of this parallel system undermines efforts to integrate national personnel and weakens the position of the ASN Law as a *basic law* for all civil bureaucracies.

In the realm of state administrative law, the placement of active soldiers raises problems regarding the legal status of the actions they take. Are decisions made by soldiers active in civilian positions an administrative act of the state subject to the provisions of the Government Administration, and can the decision be challenged in the State Administrative Court (PTUN)? Formally, the act is an administrative act of the state, but substantially, its officials are bound to military command. This inconsistency creates uncertainty over the jurisdiction of the PTUN, since it will be difficult to test decisions with a military command background without violating the principle of military autonomy. This undermines the system of public accountability and

legal protection for citizens who feel aggrieved by the decisions of military officials in the civilian sphere (Zarkasi, 2025).

Active soldiers have financial rights and obligations that are specifically regulated by military regulations. When placed in civilian office, questions arise regarding payroll, benefits, and double pensions. Unclear arrangements have the potential to violate the principle of state financial accountability, especially in terms of remuneration sourced from the State Revenue and Expenditure Budget (APBN). The absence of harmonious and comprehensive arrangements regarding these financial rights and obligations may lead to the misuse of state finances, which juridically violates the principles of transparent and responsible state financial management. The provisions of Article 47 of the 2025 TNI Law also have implications for the rights of other active soldiers who are not stationed. In addition, the placement mechanism that is the assignment of the Commander opens up space for the practice of nepotism or placement that is not based on competence, which can be contrary to the principles of good and professional military governance.

The reconstruction of the norms of Article 47 of the TNI Law must be carried out by eliminating the alternative of placement without conditions of retirement in non-defense civilian institutions. The appropriate juridical solution is to require every soldier who wishes to occupy a civilian position, regardless of the type of ministry/institution in which he is stationed, to renounce active service status (retirement or resignation). This principle is in line with the principle *of one man, one job, one loyalty*. This reconstruction must also ensure that the filling of positions by former soldiers (retired) remains through an open and competitive selection mechanism in accordance with the ASN Law, so that meritocracy is maintained and there are no *military status privileges* left. The expansion of the deployment of active soldiers includes constitutional disharmony, violations of the principles of legal certainty and meritocracy, and threats to the independence of the judiciary/law enforcement institutions. The provision structurally legitimizes military intervention into the civilian realm through legalized dualism of loyalty (Sari et al., 2025).

### **The expansion of the placement of active soldiers in ministries/institutions and civilian positions is reviewed based on the principle of civilian supremacy**

Civil supremacy is a principle in which supreme power is in the hands of a democratically elected civilian government, not a military. This means that the military is subject to the control and policies of the civilian government, which aims to prevent military domination, maintain democratic stability, and protect human rights, as mandated by Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The expansion of the deployment of active TNI soldiers outside the defense sector, especially those regulated through the provisions of Article 47 paragraph (1) of the 2025 TNI Law, is juridical-philosophical in a fundamental contradiction to this principle. This norm, which allows active servicemen to occupy positions in strategic civilian institutions without having to relinquish their active service status, creates a structural anomaly in which military command authority has the potential to enter and influence the realm of civilian public policy. This is not just an administrative problem, but a serious threat to democracy, which has been built on the strict separation of roles and functions between the military as a means of defense and the civilian bureaucracy as an accountable public servant (Detikcom, 2025).

Conceptually, civilian supremacy defines the military's subordinative relationship to civilian political power, which explicitly includes civilian control over the setting of military budgets, the determination of national defense policies, and the supervision and appointment of personnel to key military positions. The logical consequence of this principle is the affirmation that the functions of the TNI must be limited to its constitutional mandate, namely to maintain the sovereignty and integrity of the state, in accordance with Article 30 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and to avoid interference in the functions of civil government. A crucial problem arises when Article 47 paragraph (1) of the 2025 TNI Law allows active personnel to fill civilian positions, because such active status inherently binds soldiers to the chain of command, discipline, and military law, which is beyond the direct control of the civilian authorities where they work. This situation structurally undermines the principle of subordination, because civilian officials from the active military simultaneously have two superiors: the civilian superior in the ministry/institution and the military superior (the TNI Commander) in the operational chain of command.

Article 47 paragraph (1) of the 2025 TNI Law, which expands the placement of active soldiers in civilian positions, substantially contradicts the principle of a democratic state of law as enshrined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law demands legal certainty, equal treatment before the law, and clear limitations on power through the separation of functions. The enactment of norms that create a dual legal status for public officials, one foot in the civilian bureaucracy and one foot in the military hierarchy. In this system, in the event of a violation or dispute, the determination of whether the official is tried in a general (civil) or military court becomes unclear, which fundamentally undermines the unity of the legal system and the integrity of the civilian bureaucracy. In addition, the entry of active military elements into the civilian bureaucracy without a strict separation of status can be considered a covert form of abuse of power, as it is not through a transparent and open mechanism of civilian political oversight, which is an absolute requirement for the establishment of a democratic state of law (Yanto, 2020).

The expansion of the placement of active soldiers is feared to be a signal for the return of the shadow of the Dual Functions of the Indonesian Armed Forces in a more subtle form. Although formally the doctrine of Dual Function has been abolished, Article 47 paragraph (1) of the 2025 TNI Law provides space for military personnel to fill strategic and even political non-defense positions, such as in the Attorney General's Office, the Supreme Court, or state intelligence agencies. Placement in these civilian institutions reflects a shift in the military's focus from being a mere tool of defense to a tool of the state that is also involved in administrative, judicial, and civil law enforcement functions. The greatest concern is that the military's active presence will dominate and replace the civilian approach in policy formulation, prioritizing hierarchical command solutions over deliberative consultations, and reducing the space for public participation and transparency. It systematically erodes the civilian character of the bureaucracy, threatens to politicize defense institutions, and implicitly revives the sociopolitical role of the military that was expressly rejected by the 1998 Reformasi agenda as a prerequisite for a stable Indonesian democracy.

As an active soldier, the individual is bound by military oaths, harsh military discipline, and a command hierarchy that demands immediate obedience without objection, with sanctions in the form of military trials for violations. Meanwhile, as a civil servant, he is obliged to submit

to state administrative law, ASN ethics, and public accountability to the leaders of ministries/institutions and Parliament (DPR). When there is a potential conflict between the interests of the military institution (represented by the TNI Commander) and the interests or policies of the civilian institution where it works, loyalty to the military chain of command will tend to take precedence because military disciplinary sanctions are stricter and more immediate than civilian administrative sanctions.

The militaristic culture instilled through the deployment of active soldiers has the potential to erode the integrity and professionalism of the civilian bureaucracy. The civil bureaucracy in a democratic country must operate on the principles of transparency, horizontal and vertical accountability, information disclosure, and tested deliberative and meritocratic procedures. Military culture, on the other hand, emphasizes speed, operational secrecy, and closed command compliance. If active military officials bring this culture into civilian functions (e.g., budget planning, licensing, or policy oversight), then civilian decision-making mechanisms will tend to become closed, less consultative, and less responsive to public criticism. This not only undermines the work ethic and professionalism of civil servants who have been trained in the meritocratic system, but also creates structural obstacles to efforts to eradicate corruption and enforce public accountability. The presence of actors with a command background in a civilian environment that should be collegial and open is a serious threat to the quality of good governance that is a prerequisite for civil supremacy (Maysura, 2025).

Another aspect that is threatened is the military professionalism of the TNI itself. Military professionalism requires a focus on the defense of the country, which requires military personnel to undergo intensive training, have high operational readiness, and maintain political neutrality. The expansion of the deployment of active soldiers to non-defense sectors significantly diverts the TNI's best human resources from its main tasks, reducing combat effectiveness and operational readiness as a fortress of the state. Each officer placed in civilian office means a reduction in one skilled resource that should be involved in military training, defense strategy, or operations, which in turn can weaken the TNI institution as a whole. In addition, this practice has the potential to open up space for internal politicization in the military, where placement in civilian posts can be a career incentive based on political proximity, rather than on defensive merit and expertise. This undermines the spirit of professionalism and meritocracy in defense institutions, while threatening the integrity of the TNI as a tool of the state that is neutral and focused on the constitution.

The expansion of the deployment of active soldiers without the necessity of factual resignation creates unfair privileges, which violate the principle of equal treatment before the law and the guarantee of meritocracy, as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This norm provides a fast-paced, non-competitive pathway for active servicemen to fill strategic civilian positions. This privilege directly harms civilian citizens who have invested in education and academic qualifications to occupy public positions based on the principles of competence and expertise. In other words, the 2025 TNI Law gives the military the flexibility to "cut the queue" in the civilian bureaucracy, which goes against the ethos of public service that is based on merit, not on institutional membership status. The failure to guarantee equal opportunities in public office is a serious violation of the values of substantive justice that are the main pillars of the state of law and civil supremacy.

The list of ministries/institutions expanded in Article 47 paragraph (1) of the 2025 TNI Law shows a disproportionate expansion of coverage and is not relevant to defense duties. While placement in the Ministry of Defense or the National Resilience Institute can still be justified because it has a direct wedge with state security, the addition of institutions such as the Attorney General's Office of the Republic of Indonesia and the Supreme Court shows that there is a problem of penetrating the boundaries of power that should be separate. These institutions are pillars of judicial and law enforcement power, whose independence is an absolute prerequisite for civil supremacy. If strategic positions in it can be filled by active soldiers, then the independence of the institution from the influence of the military command will be threatened, and the legal decisions taken can be suspected of being influenced by the interests of the military institutions (Metrotvnews, 2025).

The expansion of the deployment of active soldiers significantly weakens the horizontal control and supervision mechanisms (*checks and balances*) that are essential in democracy. In the civil supremacist system, the legislative institution (DPR) has a vital role in supervising the performance and policies of the government, including the civil bureaucracy. Civilian officials from active military, especially those tied to the chain of command, can create problems in oversight where oversight by the House of Representatives becomes hampered. When called upon to account for his or her performance, the official may take refuge behind claims of military secrecy, command protocol, or military discipline. This can erode the authority of the House of Representatives in carrying out *its budgeting* and supervision functions, as well as reduce the accountability of the government as a whole. This weakening is directly contrary to the spirit of reform to strengthen civilian control over all state instruments.

Comparative legal analysis shows that the expansion of active duty military deployment in Indonesia is contrary to best practices in advanced democracies, which strictly uphold the principle of civil supremacy. In the United States, Britain, and Germany, for example, military personnel who wish to occupy civilian political or administrative positions must first resign or retire from active service. These terms of resignation or retirement are crucial mechanisms that ensure that the official is completely detached from military discipline and is bound exclusively to the code of ethics and civilian accountability. By maintaining active status, the 2025 TNI Law puts Indonesia in an anomalous position among democratic countries that are serious about enforcing a strict separation between military and civilian functions.

In terms of legal interpretation methodology, the phrase 'certain positions' in Article 47 paragraph (1) of the 2025 TNI Law should be interpreted in a restrictive and strict manner, only including positions that are functionally inseparable from the role of national defense and security, such as those directly related to defense equipment management, defense intelligence, or combat readiness. If the phrase 'certain' is interpreted inclusively, then the boundary between military and civilian functions will be non-existent, and Article 30 paragraph (3) of the 1945 Constitution of the Republic of Indonesia concerning the limitation of the role of the TNI only in defense will lose its meaning. Therefore, public law requires that any exception to the general rule (in this case, the general rule is a military prohibition in civilian) must be interpreted narrowly and narrowly, in accordance with the higher constitutional goal, which is civil supremacy. Widespread interpretations actually create normative uncertainty that is contrary to the spirit of reform.

An analysis of Article 47 paragraph (5) of the 2025 TNI Law, which stipulates that the career development of Soldiers occupying certain positions is carried out by the Commander through coordination with the leaders of ministries and institutions, explicitly institutionalizing the intervention of the military hierarchy on civilian personnel management. In a civil meritocratic system, career coaching, performance evaluation, and promotion of a civilian official must be entirely in the hands of the head of the civil authority where he or she works, based on civilian performance standards. With the Commander's coordination clause, the TNI Commander effectively has the power to influence, or even veto, the career decisions of a civilian official, which creates conditions for military *cawe-cawe* in the bureaucratic realm. The civilian official will tend to be more careful in making decisions that may be contrary to the interests of the military institution in order to maintain the progress of his career which is still under the control of the Commander-in-Chief, thus fundamentally undermining the functional integrity of the ministry/civilian institution.

A normative solution consistent with the principles of civilian supremacy and the Democratic Rule of Law is the imposition of absolute rendition requirements for all military placement in non-defense civilian positions. This mandatory retirement or resignation requirement is a necessary legal bridge to strike a balance between the use of specific military professional expertise and the enforcement of the principle of sole loyalty to civilian authorities. By relinquishing active status, an officer transitions to full civilian citizenship, is fully subject to civil law, and relinquishes the bonds of command, which automatically eliminates conflicts of loyalty and the threat of Dual Functions.

Thus, the expansion of the placement of active soldiers in ministries/institutions and civilian positions through the 2025 TNI Law Article 47 paragraphs (1) and (2) is a legal anomaly that is fundamentally contrary to the principle of civil supremacy, which is the pillar of Indonesia's Democratic Rule of Law. These conflicts include the creation of double loyalty and the blurring of accountability, which undermines the integrity of civilian command, violations of the principles of meritocracy and equal treatment fairness by granting status privileges, and the potential politicization of defense institutions and the re-militarization of the civilian bureaucracy, especially through placement in the judiciary and law enforcement. In order to maintain the consistency of the legal system and the spirit of reform, the only constitutionally acceptable solution is an interpretation that requires every active soldier to relinquish his or her active service status through resignation or retirement before occupying civilian office.

## **CONCLUSION**

The expansion of the placement of active TNI soldiers in civilian ministries and institutions under Article 47 paragraphs (1) and (2) of the 2025 TNI Law, without requiring resignation or retirement from active service, was found to create constitutional disharmony and normative conflicts. This condition reduced legal certainty and produced a dual status problem between military and civilian roles, which risked jurisdictional overlap, unequal treatment before the law, and violations of meritocratic principles as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. It also raised concerns over the independence of judicial and law enforcement institutions, as well as broader threats to civil supremacy by potentially reintroducing elements of military influence within civilian bureaucracy. The dual status further generated issues of divided loyalty and unclear accountability between military command

structures and civilian authorities. Therefore, it was recommended that Article 47 be reconstructed to require soldiers to resign or retire from active service before holding civilian positions, to uphold the principle of “one person, one position, one loyalty” as a foundation for military professionalism and democratic governance. Future research is suggested to examine comparative models of military-to-civilian transitions in other democratic states and to assess their effectiveness in maintaining both civil supremacy and institutional efficiency.

## REFERENCES

- Ahmad, et al. (2024). *Textbook of Legal Research & Writing Methods*. PT. Sonpedia Publishing Indonesia.
- Alsarhan, N. Q., & Alsarhan, M. F. (2025). The Impact of the Implementation of the Principle of Separation of Powers on Achieving Democracy in Contemporary Political Systems: A Comparative Study Between Presidential and Semi-Presidential Syst. *Al-Biruni Journal of Humanities and Social Sciences*, 3(11), 10–36.
- Bulman-Pozen, J., & Seifter, M. (2023). State constitutional rights and democratic proportionality. *Columbia Law Review*, 123(7), 1855–1928.
- Detikcom. (2025). *What is Civil Supremacy? This is the Definition, Impact, and Application in Indonesia*. <https://www.detik.com/jogja/berita/d-7836084/apa-itu-supremasi-sipil-ini-definisi-dampak-dan-penerapannya-di-indonesia>
- Ekiert, G., Stoltzfus, N., & Osmar, C. (2021). Civil society as a threat to democracy. *The Power of Populism and People: Resistance and Protest in the Modern World*, 53–72.
- Firmanto, T., et al. (2024). *Legal Research Methodology: A Comprehensive Guide to Scientific Writing in the Legal Field*. PT. Sonpedia Publishing Indonesia.
- Henckels, C. (2017). Proportionality and the separation of powers in Constitutional Review: examining the role of judicial deference. *Federal Law Review*, 45(2), 181–197.
- Huda, A. K. N., & Abdullah, S. (2024). Authority to Examine and Adjudicate Military Courts in the Settlement of General Crimes Committed by Members of the Military. *Journal of Law, Politics and Social Sciences*, 3(4), 267–281.
- Laritmas, S., & Rosidi, A. (2024). *Theories of the State of Law*. Prenada Media.
- Maysura, N. A. (2025). The Role of the Merit System in Bureaucratic Reform in Indonesia: Challenges and Solutions in the Perspective of State Administrative Law. *Source: Journal of Administrative Law*, 6(1), 85–105.
- Metrotvnews. (2025). *Revision of the TNI Law, Assignment of Civil Positions Expanded to 15 Institutions*. <https://www.metrotvnews.com/play/kELCzomR-revisi-uu-tni-penugasan-jabatan-sipil-diperluas-jadi-15-lembaga>
- Quddus, M. S., & Firdaus, F. M. (2025). Dualism of the Role of the TNI: How Does the New TNI Law Strengthen or Weaken the Principles of Civil Supremacy and Governance? *J-CEKI: Journal of Scientific Scholars*, 4(4), 464–473.
- Salsabil, H. H., & Nasihuddin, A. A. (2025). The Legal Politics of Active TNI Placement in Civil Positions: Between State Interests and Civil Supremacy. *Progressive: Legal Journal*, 19(1), 43–69.
- Sari, D. J., et al. (2025). Legal Perspective on the Inconsistency of Reform Principles in the ASN Law Related to the Filling of ASN Positions by the TNI. *Judge: Journal of Law*, 6(2), 1–11.
- Susdarwono & Wiranta, A. (2025). *Thoughts Around the Revision of the TNI Law*. Pen Strokes.
- Tempo. (2025a). *Constitutional Court Highlights Contradictions in Civil Position Rules Filled by TNI Soldiers*. <https://www.tempo.co/politik/mk-soroti-kontradiksi-aturan-jabatan-sipil-diisi-prajurit-tni-2078070>
- Tempo. (2025b). *Explanation of the House of Representatives on Article 47 of the TNI Law*

*Highlighted by the Chairman of the Constitutional Court.*  
<https://www.tempo.co/politik/penjelasan-dpr-soal-pasal-47-uu-tni-yang-disorot-ketua-mk-2078739>

Yanto, O. (2020). *The State of Law: Certainty, Justice and Legal Usefulness (In the Indonesian Criminal Justice System)*. Pustaka Reka Cipta.

Zarkasi, A. (2025). Filling of Civil Positions by Active TNI Members in the Perspective of Laws and Regulations. *Limbago: Journal of Constitutional Law*, 5(2), 92–105.