



BALANCING INDEPENDENCE AND AUTHORITY IN MILITARY INVESTIGATIONS

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ABSTRACT

This article evaluates investigative independence and unity of command to determine the legitimacy, restrictions, and accountability of Indonesia's military justice system's case closures and terminations. Using a normative legal methodology with transformative-participatory perspectives, the study investigates statutes, internal military regulations, case law, and practitioner experiences to identify doctrinal discrepancies and structural limits affecting investigative decision-making. Investigators have formal discretion, but hierarchical command structures may influence termination decisions, creating legal ambiguity and procedural injustice. The research suggests that command authority must be limited while investigative autonomy is protected by clearer doctrinal constraints. The paper provides a normative framework and accountability metrics for legal, evidence-based, and transparent termination decisions. These ideas aim to balance autonomy and command structure, boost institutional credibility, and improve military justice accountability.

Introduction to the Problem: The study shows how hierarchical authority in Indonesia's military justice system can lead to undue influence, procedural inconsistencies, and legal uncertainty in investigative termination decisions.

Purpose/Study Objectives: The study analyzes the normative and institutional foundations of investigative termination, the interaction between independence and command hierarchy, doctrinal and structural gaps affecting investigative objectivity, and a reconstructed normative framework with accountability indicators to guide lawful and transparent procedures.

Novelty: This study uses normative juridical analysis and transformative-participatory strategies to improve institutional understanding of military command organizations' legal norms. A new Indonesian military justice research innovation, reconstructing investigative termination authority's conceptual boundaries and employing quantitative accountability indicators, clarifies doctrine.

Methodology: Transformational-participatory legal research is integrated with statutory, conceptual, and case-based normative legal analysis. Document analysis, in-depth interviews, focus group discussions, and participatory observation provided data for qualitative interpretative methods like doctrinal review, structural reflection, triangulation, and iterative validation.

Results/Findings: Research reveals that hierarchical command structures greatly influence investigative termination decisions, restricting investigative independence despite express commitments. Inconsistent regulations and procedures risk command intervention, accountability, and normative vs. institutional practice. A study found that normative reconstruction and structured accountability indicators are needed to reconcile independence and command hierarchy, promote procedural fairness, and legitimize military justice.

INTRODUCTION

To maintain discipline and accountability in the Indonesian military, the TNI operates the military judicial system. System oversight is by Indonesia's Supreme Court. Dual monitoring upholds the rule of law and holds military personnel accountable in criminal and disciplinary proceedings¹². For fairness and instruction compliance, military courts must be autonomous. They still struggle to operate freely³. Military tribunals are Indonesia's last resort for discipline when higher-ups don't confront improper behavior, indicating their legal importance⁴. Maintaining military justice and administration requires procedural integrity⁵.

Hierarchical ties affect legal procedures and institutional authority in centralized military investigations. Indonesian military police investigators need superior approval to detain suspects. Investigations may become less objective⁶. The President is commander-in-chief of all U.S. military personnel. This gives probes power and accountability⁷. Lack of paperwork and leaders' reluctance to participate make military cybercrime investigations difficult⁸. These factors show how challenging command authority and legal procedures are in military investigations, necessitating revisions to make them more independent and effective⁹.

Complex rules, conventions, and processes in the military justice system require doctrinal interpretation to finish investigations and cases. Military law in the US is governed by the UCMJ. Order and fair trials have been maintained by wartime adjustments¹⁰. Indonesian military police

¹ Slamet Sarwo Edy, "THE INDEPENDENCY OF MILITARY JUSTICE SYSTEM IN THE INDONESIAN (The Study of The Structure of The Judiciary)," *Jurnal Hukum Dan Peradilan* 6, no. 1 (2017), <https://doi.org/10.25216/jhp.6.1.2017.161>.

² Tiarsen Buaton et al., "Position and Jurisdiction of Military Courts in Indonesia," *Jurnal Studi Multidisiplin Ilmu* 2, no. 1 (2024): 53–64, <https://doi.org/10.35912/jasmi.v2i1.3518>.

³ Joko Sasmito, "Judicial Independence in the Enforcement of Military Crimes in the Indonesian Justice System," *Lex Publica* 5, no. 1 (2018): 16–22, <https://doi.org/10.58829/lp.5.1.2018.16-22>.

⁴ Dedy Zulkifli, Burham Pranawa, and Tegar Harbriyana Putra, "Tinjauan Yuridis Empiris Terhadap Tindak Pidana Tidak Mentaati Suatu Perintah Dinas Berdasarkan Kitab Undang-Undang Hukum Pidana Militer," *Jurnal Bedah Hukum* 6, no. 2 (2022): 128–39, <https://doi.org/10.36596/jbh.v6i2.911>.

⁵ Edy, *Op Cit*.

⁶ Lies Sulistiani, Elis Rusmiati, and Destri Prasetyoandi, "Assessment of the Investigative Objectivity in the Execution of Detention Authority under the Principle of Unity of Command in the Indonesian Military Criminal Justice System," *Journal of Ecohumanism* 3, no. 8 (2024): 3417–26, <https://doi.org/10.62754/joe.v3i8.5007>.

⁷ Christian Mouhanna, "Hierarchical Structures and Police Cultures: Internal Antagonisms and Their Consequences for the Evolution of Public Service," *French Review of Public Administration* 185, no. 1 (2024): 25–44, <https://doi.org/https://doi.org/10.3917/rfap.185.0027>.

⁸ А Ф Волобуев et al., "Постановка Проблеми . В Реаліях Сьогодення Кіберзлочинність Стала Однією з Найсерйозніших Загроз Для Національної Безпеки , Оскільки Здатна Негативно Впливати На Більшість Функцій Держави , Включаючи Її Обороздатність . Здійснюючи Протидію Військам Краї" 4, no. 51 (2024).

⁹ Sulistiani et. al, "Assessment of the Investigative Objectivity in the Execution of Detention Authority under the Principle of Unity of Command in the Indonesian Military Criminal Justice System"; Волобуев et al., *Op.Cit*.

¹⁰ Dru Brenner-Beck Michael A. Newton, "Military Justice," in *Understanding the U.S. Military* (Routledge, 2022), 201–15, <https://doi.org/https://doi.org/10.4324/9781003154877-17>.

prosecute and try desertion cases in military courts. This underlines rules' importance¹¹. Both systems must address robust legal frameworks and other factors like social attitudes and the operating environment that may affect military law enforcement^{12,13}. Military justice is difficult and requires legal and cultural knowledge to ensure fairness.

Structured conflict between legal independence and unity of command may compromise military justice investigations' impartiality and legitimacy. Indonesian independent military police investigators cannot arrest suspects. They need clearance from a higher authority, making their inquiries less objective¹⁴. Active military troops in military tribunals raise issues about judicial independence since command influence can skew legal rulings¹⁵. International standards need fair and independent military justice. Limit military courts and exclude civilians from military justice¹⁶. This structural contradiction reveals how hard it is to balance command authority with impartial military courts.

Supremacy in military investigations can lead to excessive influence and lack of accountability. Indonesian military police investigators couldn't arrest suspects without authorization from their superiors, which might compromise investigations¹⁷. Military superiors, or ANKUM, face severe investigations. Lack of investigation experience and internal conflicts of interest can impair professionalism and distort outcomes. Military justice's "command influence" emphasizes superiors' legal and illegal power, requiring constant vigilance to avoid excess^{18,19}. This shows the need for

¹¹ Heru Rustaman et.al, "Penegakan Hukum Terhadap Tindak Pidana Militer Desersi Di Wilayah Hukum Pengadilan Militer II-09 Bandung Ditinjau Dari Aspek Hukum Pidana Militer," Bandung Conference Series: Law Studies 4, no. 2 (2024): 1049–55, <https://doi.org/10.29313/bcsls.v4i2.15606>; Alfin et.al, "Penerapan Hukum Militer Terhadap Anggota Militer Yang Melakukan Desersi Berdasarkan Kitab Undang-Undang Hukum Pidana Militer," Cakrawala Hukum 12, no. 1 (2021): 95–110, <https://doi.org/https://doi.org/10.51921/8w8fcn18>.

¹² Destri Prasetyoandi, et. al, "The Concept of Reforming Military Justice System Specifically in the Termination of Investigations on the Regulation of Institutions and Authority of Military Police Investigations in Indonesia," Revista de Gestão Social e Ambiental 19, no. 1 (2025): e010973, <https://doi.org/10.24857/rgsa.v19n1-123>.

¹³ Alfin et.al, Op.Cit.

¹⁴ Sulistiani, et. al., Op. Cit.

¹⁵ A Allgemein, "Kapitel 3 : Unabhängigkeit Und Unparteilichkeit Von," n.d.; Eugene R. Fidell, Command Influence, Lawful and Unlawful, Military Justice: A Very Short Introduction, 2016, <https://doi.org/https://doi.org/10.1093/acrade/9780199303496.003.0006>.

¹⁶ Hurtado et.al, "Independencia e Imparcialidad En Sistemas de Justicia Militar : Estándares I Ndependence and I Mpartiality in M llitary J Ustice S Ystems : C Omparative I Nternational S Tandards ¿ Es La Justicia Militar Un Sistema Judicial Independiente e Imparcial ? Dur," 2011, 191–248.

¹⁷ Sulistiani, et al. Op.Cit.

¹⁸ A. O. Syahbana, "Kewenangan Penyidikan Oleh ANKUM Pada Kasus Pidana Militer Dalam Menghadapi Tantangan Konflik Kepentingan Internal" 1, no. 4 (2024): 287–94, <https://doi.org/https://doi.org/10.62383/humif.v1i4.818>.

¹⁹ Е.Ю. Молокопеева, "К вопросу Об Обжаловании Следователем Решений (Указаний) Руководителя Следственного Органа В Уголовном Процессе," Тенденции Развития Науки И Образования 93, no. 5 (2023): 53–56, <https://doi.org/10.18411/trnio-01-2023-235>; Fidell, Command Influence, Lawful and Unlawful.

stronger monitoring and institutional adjustments to ensure accountability and inquiry integrity²⁰.

Academic and regulatory debates of how independence and command structure effect investigations are sparse and confusing. Police have discretion to terminate investigations, complicating authority and responsibilities, say Saptanno and Pasalbessy. Internal and external controls limit the police's investigation-ending powers²¹. Kim worried about accountability after legislative revisions granted police extensive but limited investigation powers²². Brehmer's study of command and control decision-making frameworks shows that hierarchical dynamics' implications on research must be studied systematically²³. Shotts and Wiseman's discussion of political influence on investigations complicates matters by showing that political leaders' decisions can affect police operations²⁴. This shows a better grasp of how independence and command structure effect investigations.

Military judicial systems must elucidate investigative termination principles and institutional practices to ensure legal clarity and procedural justice. The Military Criminal Procedure Law in Indonesia doesn't let Military Police Investigators stop investigations, even when they have a good reason to²⁵. This makes the law less effective and fair. The Corruption Eradication Commission (KPK) is involved in military corruption investigations, which makes things more open and effective²⁶. This shows that the law needs to be changed to make everyone equal. The Corruption Eradication Commission (KPK)'s role in military corruption investigations makes things more open and effective, showing that laws need to be changed to be fair²⁷. To make these procedures more trustworthy and fair, add clear standards for ending investigations.

Legality, limits, and accountability of investigative termination and case closure in military

²⁰ Christos Boukalas, "Overcoming Liberal Democracy: 'Threat Governmentality' and the Empowerment of Intelligence in the Uk Investigatory Powers Act," *Studies in Law Politics and Society* 82 (2020): 1–25, <https://doi.org/10.1108/S1059-433720200000082002>.

²¹ Lingga, et.al. "Kewenangan Diskresi Kepolisian Dalam Penghentian Penyidikan," *PAMALI: Pattimura Magister Law Review* 3, no. 1 (2023): 1, <https://doi.org/10.47268/pamali.v3i1.1034>.

²² D.-K Kim, "Issues and Alternatives of the Police's Power to Terminate Investigations after Coordination of Investigative Authority - Focusing on Issues of Legal Interpretation and Legislative Alternatives" (*형사정책연구*, 2022), <https://doi.org/https://doi.org/10.36889/kcr.2022.9.30.3.55>.

²³ Berndt Brehmer, "Dynamic Decision Making in Command and Control," *The Human in Command*, 2000, 233–48, https://doi.org/10.1007/978-1-4615-4229-2_16.

²⁴ Shotts, et.al, "Information, Accountability and the Politics of Investigations" (Chicago, 2008).

²⁵ Prasetyoandi, et.al, "The Concept of Reforming Military Justice System Specifically in the Termination of Investigations on the Regulation of Institutions and Authority of Military Police Investigations in Indonesia."

²⁶ Pertiwi, et.al, "Reformulation of Investigation Arrangements On Corruption In Law No. 31 of 1997 on Military Justice In Indonesia," *International Journal Of Humanities Education And Social Sciences (IJHES)* 4, no. 3 (2024): 1736–43, <https://doi.org/https://doi.org/10.55227/ijhess.v4i3.1414>.

²⁷ Matthew L. Williams, "Guardians Upon High: An Application of Routine Activities Theory to Online Identity Theft in Europe at the Country and Individual Level," *British Journal of Criminology* 56, no. 1 (January 1, 2016): 21–48, <https://doi.org/10.1093/bjc/azv011>.

tribunals are key issues in Indonesian military justice. Law No. 31 of 1997, which undermines legal efficiency and fairness, prohibits Military Police Investigators from ending investigations even with justifiable reasons²⁸. Investigators need more authority from supervisors to conduct objective inquiries, as their dependence might harm the process²⁹. In cases of severe international law offenses, when impartiality and independence differ from civilian courts, the military needs a special accountability procedure³⁰. For military trials to be fair, investigators must be empowered and leadership positions explained³¹.

METHODS

The research uses normative and transformative–participatory legal methodologies. Normative juridical foundation studies military justice system legal principles for investigation termination (penghentian penyidikan) and case closure. To understand the military judicial hierarchy's legal structure and institutional power, legislation, conceptual, and case studies are needed.

Transformative–participatory doctrinal interpretation incorporates military criminal procedure lawyers' reflective perspectives. The concept of law as a normative order and a socio-institutional practice generated by command relations helps us understand how judicial independence and unity of command interact. Dialogical and reflective interaction reveals structural constraints and institutional processes affecting military court investigative authority.

In the study, the 1945 Constitution, Law No. 31 of 1997 on Military Courts, Law No. 34 of 2004 on the Indonesian National Armed Forces, internal military procedural norms, and authoritative judicial rulings on investigative termination and military case disposition are Taught books, academic journal articles, research studies, policy documents, military justice doctrinal literature, and scholarly discussions of judicial independence, command responsibility, and prosecutorial discretion in hierarchical institutions are secondary legal materials Legal dictionaries and encyclopedias clarify technical terms and aid doctrinal review.

The integrated normative–transformative research uses document study, in-depth interviews, focus group discussions, and participatory observation to gather legal materials. Systematic evaluation of statutes, internal regulations, SOPs, military judicial records, and relevant case documents is document study. To examine how independence and command structure effect

²⁸ Prasetyoandi, et. al., Op.Cit.

²⁹ Sulistiani, et.al, Op.Cit.

³⁰ Claire Simmons, *Military Investigations in Armed Conflict Independence and Impartiality under International Law* (Routledge, 2024), <https://doi.org/https://doi.org/10.4324/9781003360223>.

³¹ Lisnawaty et.al, "Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer Dalam Perkara Pidana 'Initiating Military Criminal Acts As A Competence Of Military Justice Absolute In Criminal Crime,'" *Jurnal Legalitas* 12, no. 1 (2022): 62–63.

investigative decision-making, military investigators, police, Oditur prosecutors, judges, and legal experts are interviewed. Collective reflection in focus groups helps institutional players articulate and validate structural concerns. Participants observe military justice and inquiry. Methodological reliability is ensured by triangulation of sources, cross-verification of interpretations between documented evidence and practitioner narratives, and member-checking with participants to confirm interpretative conclusions.

Qualitative interpretation uses doctrinal legal analysis and critical–reflective appraisal. Doctrinal analysis involved legislative interpretation, legal comparison, jurisprudential examination, and investigative authority–military justice normative coherence. Investigating how hierarchical command systems affect investigator decision-making and institutional autonomy is critical–reflective. This analytical paradigm combines legal practitioner input and iterative interpretative cycles to understand independence and unity of command. Analysis produces normative propositions and accountability indicators that help evaluate Papera, Ankum, and other military agencies' investigative termination and case closure choices.

Start the probe with legal issues related to investigative power, independence, and command hierarchy. After collecting legal and empirical data, interpretive legal analysis and stakeholder reflection follow. Harmonizing normative conclusions and creating accountability indicators improves military justice case termination and closure procedural integrity in the final stage.

Indonesian military police investigation units, Oditurat branches, tribunals, and military legal studies academic institutions perform the study. These environments enable normative and procedural integration.

DISCUSSION

Military Justice System Investigative Conclusion Regulations and Institutions

A complicated hierarchy of legal instruments defines the functions of investigating bodies and commanding officers in military justice systems and who can end investigations. Indonesian Military Police Investigators, together with Military Prosecutors and Superiors (Ankum), investigate military justice cases under Law Number 31 of 1997³². Delegated authority can rise to problems about the Ankum's investigation powers, especially in custody³³. Police have the ability to close cases due to

³² Sulistiani, et.al, Op.Cit.; Edi Utomo, “KEWENANGAN ATASAN YANG BERHAK MENGHUKUM (ANKUM) SEBAGAI PENYIDIK DALAM SISTEM PERADILAN MILITER,” *Al-Adl: Jurnal Hukum* 10, no. 1 (2018), <https://doi.org/10.31602/al-adl.v10i1.1151>.

³³ Utomo, “KEWENANGAN ATASAN YANG BERHAK MENGHUKUM (ANKUM) SEBAGAI PENYIDIK DALAM SISTEM PERADILAN MILITER.”

insufficient evidence or reconciliation³⁴. This layered structure highlights the requirement for clear authority distinctions to achieve objective investigations and military justice³⁵.

The authority distribution among investigators, commanding officers, and supervisory divisions greatly affects police investigative termination choices. Command hierarchies, frequently fashioned after military organizations, allow higher-ranking officials to make operational decisions, affecting field agents' autonomy and investigations³⁶. The Investigation Supervision Division (Bagwassidik) in Bali ensures legal conformity, although staff shortages and administrative inefficiencies limit its supervisory capacity³⁷. Police commanders' decisions significantly impact criminal investigations, underscoring the need for better leadership training and support³⁸. Overall, command structure and authority distribution affect policing investigations and outcomes³⁹.

Institutional and philosophical constraints on independent decision-making impede military judicial and investigative independence. Insular military court systems, whose judges are selected by military authority, raise questions about impartiality and accountability⁴⁰. The Israeli judiciary navigates delicate interactions with military command while upholding legal standards during wartime, balancing judicial independence and the requirement for concentrated power⁴¹. International human rights standards also advocate for the exclusion of civilians from military courts and clear guarantees of impartiality⁴². Recent legal challenges in Canada have shown the need for reforms to guarantee military judges are autonomous from military leadership to restore confidence in military justice systems⁴³. These dynamics show the delicate balance between military hierarchy

³⁴ Azizul Hakiki, "Surat Perintah Penghentian Penyidikan (SP3) Yang Diterbitkan Berdasarkan Perdamaian Antara Tersangka Dan Pelapor Dalam Delik Biasa," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 1, no. 2 (2022): 12–22, <https://doi.org/10.55606/jurrih.v1i2.113>; Lingga, Saptanno, and Palsabessy, "Kewenangan Diskresi Kepolisian Dalam Penghentian Penyidikan."

³⁵ Alfin, et.al; Ningrum et.al, "Penerapan Hukum Militer Terhadap Anggota Militer Yang Melakukan Desersi Berdasarkan Kitab Undang-Undang Hukum Pidana Militer."

³⁶ Mouhanna, Op. Cit.

³⁷ Sihotang, et.al, "Authority of the Investigation Supervision Division in Case Resolution at Bali Police," *Journal of Social Science (JoSS)* 4, no. 8 (2025): 435–41, <https://doi.org/10.57185/joss.v4i8.490>.

³⁸ Peter Stelfox, "Criminal Investigation: Filling the Skills Gap in Leadership, Management, and Supervision Available for Purchase Get Access Arrow," *Policing: A Journal of Policy and Practice* 5, no. 1 (2011): 15–22, <https://doi.org/https://doi.org/10.1093/police/paq055>.

³⁹ William R. King, "Bending Granite Revisited: The Command Rank Structure of American Police Organizations," *Policing* 26, no. 2 (2003): 208–30, <https://doi.org/10.1108/13639510310475732>.

⁴⁰ Fidell, *Command Influence, Lawful and Unlawful*.

⁴¹ Amnon Reichman, "JUDICIAL INDEPENDENCE IN TIMES OF WAR: PROLONGED ARMED CONFLICT AND JUDICIAL REVIEW OF MILITARY ACTIONS IN ISRAEL," *Social Science Research Network* Nov (2011): 1–20, <https://doi.org/https://doi.org/10.5072/ULR.V201111.544>.

⁴² Hurtado and Clémenceau, "Independencia e Imparcialidad En Sistemas de Justicia Militar : Estándares I Ndependence and I Mpartiality in M ilitary J Ustice S Ystems : C Omparative I Nternational S Tandards ¿ Es La Justicia Militar Un Sistema Judicial Independiente e Imparcial ? Dur."

⁴³ Rory Fowler, "Breaking the Deadlock: Independence of the Military Judiciary and the Court Martial Appeal Court of Canada," *SSRN Electronic Journal*, no. May (2015): 1–11, <https://doi.org/https://doi.org/10.2139/SSRN.3760834>.

and judicial independence⁴⁴.

Analysis of the Tension Between Independence and Unity of Command

Investigative independence and unity of command create normative difficulties that can affect investigative outcomes. Military Police Investigators in Indonesia need higher consent to detain detainees, which compromises their neutrality⁴⁵. Similarly, multiple interpretations of objectivity can lead to variations in intelligence practices, making it difficult to ensure impartiality⁴⁶. In addition, the independent review of police complaints in the UK and Ireland shows how regulatory capture can compromise impartiality⁴⁷. Political factors and financial dependence on government resources further complicate prosecutorial integrity in Ecuador⁴⁸. Finally, administrative limitations limit investigators' procedural independence, creating the impression that actual independence is a fantasy⁴⁹. These variables show how unity of command might conflict with independent investigating authority, compromising investigation outcomes.

Command interference in investigations compromises impartiality, procedural integrity, and institutional accountability, especially in military environments. Military commanders have significant control over reporting and investigating claims like sexual assaults, which can suppress reports and impede investigations⁵⁰. The history of police decision-making shows that external forces can damage integrity and accountability, raising questions about investigation independence⁵¹. Investigations are further hampered by the military's culture and armed conflict, which can lead to bias and unfairness⁵². The necessity for criminal justice system checks and balances necessitates

⁴⁴ Alfonso Jaime Martínez Lazcano, "Independencia Judicial Y Control De Convencionalidad: Límites Y Complementariedad En La Protección De Los Derechos Humanos," *Revista Direitos Sociais e Políticas Públicas (UNIFAFIBE)* 13, no. 1 (2025): 468–88, <https://doi.org/10.25245/rdspp.v13i1.1766>.

⁴⁵ Prasetyoandi, et.al, "The Concept of Reforming Military Justice System Specifically in the Termination of Investigations on the Regulation of Institutions and Authority of Military Police Investigations in Indonesia."

⁴⁶ Kira Vrist Rønn, "The Multifaceted Norm of Objectivity in Intelligence Practices," *Intelligence and National Security* 37 (2022): 820–34, <https://doi.org/https://doi.org/10.1080/02684527.2022.2076331>.

⁴⁷ Stephen P. Savage, "Thinking Independence: Calling the Police to Account through the Independent Investigation of Police Complaints," *The British Journal of Criminology* 53, no. 1 (2013): 94–112, <https://doi.org/https://doi.org/10.1093/bjc/azs056>.

⁴⁸ Katuska Moreira Aguayo, "ANALYSIS OF THE APPLICATION OF THE PRINCIPLE OF OBJECTIVITY BY THE ATTORNEY GENERAL ' S OFFICE OF THE STATE OF ECUADOR Resumen" 6 (2024): 403–13.

⁴⁹ Rossinsky Sergey Borisovich, "Independence of the Investigator in the Criminal Procedure: Myth or Reality?," *Siberian Law Herald* 99, no. 4 (2022): 113–22, <https://doi.org/https://doi.org/10.26516/2071-8136.2022.4.113>.

⁵⁰ Michal Buchandler-Raphael, "Breaking the Chain of Command Culture: A Call for an Independent and Impartial Investigative Body to Curb Sexual Assaults in the Military," *SSRN Electronic Journal*, 2015, 1–31.

⁵¹ Sara Golru, "Influences Upon Police Independence of Decision Making in Investigating and Charging Offenders," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3905650>.

⁵² Simmons, *Military Investigations in Armed Conflict Independence and Impartiality under International Law*.

reforms like independent investigative bodies to maintain impartiality and due process⁵³.

The hierarchical structure of military institutions significantly influences decision-making regarding investigative termination by constraining the discretionary space available to investigators. This is primarily due to the rigid, pyramid-shaped organizational structure typical of military institutions, which emphasizes vertical communication and limited autonomy for lower-level agents⁵⁴. Commanders have significant discretionary power, which can influence investigations lawfully or illegally and impact case outcomes⁵⁵. As mentioned in law enforcement, investigators may feel pressured to conform to superiors' expectations when exercising discretionary authority, compromising their autonomy and the investigative process⁵⁶. Investigators in military and civilian settings have many challenges due to hierarchy and discretion.

Doctrinal and Interpretive Assessment of Case Termination Mechanisms

This authority is limited by legal regulations, such as the Surat Perintah Penghentian Penyidikan (SP3), which governs investigation termination. Article 109 Paragraph (2) of Indonesia's Criminal Procedure Code allows investigations to be ended for lack of evidence, non-criminality, or legality⁵⁷. The police's discretionary capacity to end investigations is strong but constrained due to internal restrictions and external safeguards that prohibit political or economic abuse⁵⁸. The collaboration between police and prosecutorial powers emphasizes the necessity for specific legislative frameworks to ensure termination authority accountability and monitoring^{59,60}. This legal interpretation synthesis emphasizes the complexity and need to monitor investigative termination processes.

Formal procedural rules and institutional practices show consistency and considerable differences across situations. Patrín's analysis shows how institutional processes like Spitzenkandidaten and commissioner-candidate hearings often follow legal standards but sometimes

⁵³ J. H. Hong, et.al, "A Study on Changes in Investigative Procedures Due to the Amendment of the Criminal Procedure Act," 2023, <https://doi.org/https://doi.org/10.46350/kats.2023.16.3.154>; Catherine Nicol et al., "Reviewing Murder Investigations: An Analysis of Progress Reviews from Six Police Forces," 2016.

⁵⁴ Jean-Hugues Matelly, "Gendarmerie and Criminal Investigation: Investigator Facing Organization" (2004); Alistair Mutch, "Organization Theory and Military Metaphor: Time for a Reappraisal?," *SageJournal* 13, no. 6 (2006), <https://doi.org/https://doi.org/10.1177/1350508406068503>.

⁵⁵ Fidell, Op.Cit.

⁵⁶ Lingga, et.al, Op.Cit.

⁵⁷ Azizul Hakiki, "Surat Perintah Penghentian Penyidikan (SP3) Yang Diterbitkan Berdasarkan Perdamaian Antara Tersangka Dan Pelapor Dalam Delik Biasa."

⁵⁸ Ulfah, et.al, "Penghentian Penyidikan: Tinjauan Hukum Administrasi Dan Hukum Acara Pidana," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 29, no. 1 (2017): 16, <https://doi.org/10.22146/jmh.17641>.

⁵⁹ Kim, "Issues and Alternatives of the Police's Power to Terminate Investigations after Coordination of Investigative Authority - Focusing on Issues of Legal Interpretation and Legislative Alternatives."

⁶⁰ Андрій ЗАХАРКО, "Розмежування Компетенцій Слідчого, Дізнавача, Прокурора Щодо Випадків Закриття Кримінального Провадження," *Науковий Вісник Дніпропетровського Державного Університету Внутрішніх Справ*, no. 2 (2024): 279–87, <https://doi.org/10.31733/2078-3566-2023-2-279-287>.

don't, showing a dynamic relationship between law and practice⁶¹. Knutelská's analysis of parliamentary inspection in the Czech Republic, Poland, and Slovakia shows that daily routines often trump formal regulations⁶². Mori's study of refugee family reunification in France shows that procedural assurances typically fall short of legal norms and that applicants confront practical hurdles⁶³. These studies show that written norms provide a framework, but institutional behaviors often differ, requiring constant reform and adaptation to overcome these gaps.

A comparison of jurisprudence and international military justice standards illuminates military termination judgments' propriety and proportionality. International human rights norms underline the need for independence and impartiality in military trials, the exclusion of civilians, and fairness guarantees⁶⁴. The International Court of Justice's verdicts strengthen the principle of proportionality, which limits military acts to what is necessary to achieve legitimate military goals⁶⁵. International humanitarian law prioritizes civilian protection and requires appropriate military action⁶⁶. Thus, integrating these frameworks provides a deeper knowledge of how termination choices can be assessed against legal standards, maintaining accountability and international norms⁶⁷.

Structural and Practical Problems in Military Investigative Processes

Investigators' case termination judgment is severely limited by military institution structure. Commanders have power over prosecutorial decisions in the military court system, which favors order and discipline over impartial justice, which can lead to conflicts of interest and obstruct independent investigations⁶⁸. The lack of formal independence for military investigative authorities,

⁶¹ Maria Patrin, "The Legal Sources of Collegiality Between Legal Rules and Institutional Practices," in *Collegiality in the European Commission* (Oxford University Press, 2023), 63–86, <https://doi.org/https://doi.org/10.1093/oso/9780198873723.003.0003>.

⁶² Viera Knutelská, "Working Practices Winning Out over Formal Rules: Parliamentary Scrutiny of EU Matters in the Czech Republic, Poland and Slovakia," *Perspectives on European Politics and Society* 12, no. 3 (2011): 320–39, <https://doi.org/https://doi.org/10.1080/15705854.2011.596309>.

⁶³ Barocas, et.al, "Limitations and Opportunities," 2023.

⁶⁴ J. D. Sullivan, "La Boussole Morale Des Entreprises : L'éthique Des Affaires et La Gouvernance d'entreprise Comme Outils de Lutte Contre La Corruption," 2009.

⁶⁵ D. Schirwon, "Chapter 2 Historical, Philosophical and Jurisprudential Aspects of Jus Ad Bellum Proportionality," in *Inhaltsverzeichnis*, 2024, 79–132, <https://doi.org/https://doi.org/10.5771/9783748943716-79>; Zaid Ali Elgawari, "Preemptive Self-Defence in Public International Law: An Analysis Through the Lens of International Court of Justice Jurisprudence," *Access to Justice in Eastern Europe* 8, no. 1 (2025): 85–114, <https://doi.org/10.33327/AJEE-18-8.1-a000106>.

⁶⁶ Elena Pîrău, "PROPORȚIONALITATEA ÎN CONTEXTUL DREPTULUI INTERNAȚIONAL UMANITAR," *Revista Națională de Drept* 2, no. 2 (2023): 25–34, [https://doi.org/https://doi.org/10.52388/1811-0770.2023.2\(250\).03](https://doi.org/https://doi.org/10.52388/1811-0770.2023.2(250).03).

⁶⁷ Schirwon, "Chapter 2 Historical, Philosophical and Jurisprudential Aspects of Jus Ad Bellum Proportionality."

⁶⁸ Anthony J Ghiotto, "BACK TO THE FUTURE WITH THE UNIFORM CODE OF MILITARY JUSTICE : THE NEED TO RECALIBRATE THE RELATIONSHIP BETWEEN THE MILITARY JUSTICE SYSTEM , DUE PROCESS , AND GOOD ORDER AND The Military Justice System Is Unique . At the Center of This System Is Not a Ju," *North Dakota Law Review* 90, no. 3 (2014).

like inspectors general, demonstrates that institutional independence alone is not enough to maintain decision-making integrity⁶⁹. Complexities of military jurisdiction and criticism of its impact on individual rights hamper justice enforcement, often leading to reluctance to prosecute matters that may upset institutional stability⁷⁰. Individual judgment is often impaired due to structural constraints.

Command systems, especially in military and public service environments, can be misused, especially when non-legal factors influence decisions. Even with restrictions, "command influence" can lead to illegal conduct in the military, underscoring the necessity for continual attention to prevent authority abuse⁷¹. Public sector administrators have discretionary ability during probationary periods to terminate employees without objective justification, raising issues about arbitrary measures and the balance between organizational needs and individual rights⁷². Authority misuse has ethical consequences across industries, including law enforcement, where discretionary powers can have serious effects if unregulated⁷³. Thus, authority concentration and non-legal forces require strong control to prevent abuses.

Differences between military justice goals and command-centric termination methods highlight the necessity for fair and transparent protections. While commanders oversee the military justice system, which aims to maintain order and discipline while ensuring justice, this duality often leads to conflicts, especially in cases of sexual assault and domestic violence, where victims face procedural barriers and a lack of meaningful recourse⁷⁴. Even if the 2014 National Defense Authorization Act sought to address these challenges, the military leadership's resistance to further adjustments shows a systemic failure to adapt to changing justice standards⁷⁵. Commanders' ability to influence judicial results undermines the military justice process, requiring a reevaluation of

⁶⁹ Lydia Segal, "Independence from Political Influence—A Shaky Shield," *Public Integrity* 12, no. 4 (2014): 297–314, <https://doi.org/https://doi.org/10.2753/PIN1099-9922120401>.

⁷⁰ Simmons, *Military Investigations in Armed Conflict Independence and Impartiality under International Law*.

⁷¹ Fidell, *Command Influence, Lawful and Unlawful*.

⁷² Al-Ziyadi et.al, "The Discretionary Authority of Management to Terminate the Employment Relationship of an Employee on Probation," *International Academic Journal of Law* 06, no. 02 (2025): 1–8, <https://doi.org/10.47310/iajl.2025.v06i02.002>.

⁷³ Mehmood et.al, "Misuse of Authority: Ethical Concerns," in *In Memory of Ethics: A Dissection of Ethical and Social Issues in Pakistani Professional Healthcare Practice* (BENTHAM SCIENCE PUBLISHERS, 2024), 10–18, <https://doi.org/10.2174/9789815223859124010006>; Lingga, et.al, "Kewenangan Diskresi Kepolisian Dalam Penghentian Penyidikan."

⁷⁴ Giotto, "BACK TO THE FUTURE WITH THE UNIFORM CODE OF MILITARY JUSTICE : THE NEED TO RECALIBRATE THE RELATIONSHIP BETWEEN THE MILITARY JUSTICE SYSTEM , DUE PROCESS , AND GOOD ORDER AND The Military Justice System Is Unique . At the Center of This System Is Not a Ju"; Marc Edward Rosenthal, "Where Is the Justice ? The Sexual Assault Crisis Plaguing the Military and a Lack of Meaningful Justice," 2015; Reza Santya Budhi et al., "Penjatuhan Pidana Tambahan Pemecatan Terhadap Militer Yang Melakukan Tindak Pidana Kekerasan Dalam Rumah Tangga" 4, no. 1 (2025): 1390–1402.

⁷⁵ I Introduction, "IMPROVING UNIFORM CODE OF MILITARY JUSTICE With the National Defense Authorization Act of 2014 (2014" 222, no. 113 (2014): 1701–53.

command power to ensure justice is served and regarded as legitimate by all parties⁷⁶.

Implications for Legal Certainty, Accountability, and Military Judicial Integrity

The normative conflict between independence and command hierarchy reduces legal certainty and makes investigative termination decisions less credible. Police discretionary authority to end investigations raises issues about accountability and power abuse, especially when the Public Prosecutor, who normally has *dominus litis* in criminal matters, is not involved⁷⁷. In the military judicial system, investigators need superior authority to function independently, affecting investigation objectivity and resulting in legal ambiguities and contradictions⁷⁸. The Ministry of Public's struggles to balance functional independence with legal certainty and uniformity in investigations highlight the need for criminal justice reforms to improve transparency and efficiency⁷⁹. These variables collectively reduce public faith in investigative conclusions, needing a legal framework review to restore trust⁸⁰.

Hierarchical command greatly affects investigative discretion, institutional accountability, and individual rights. Research shows that prosecutors and police officers have great discretion, but hierarchical organizations often limit their decisions. In the French criminal justice system, procureurs must balance their discretion with bureaucratic goals, which leads to resource-based inequities⁸¹. Police organisations have also moved towards hierarchical control, which reduces officer autonomy and disengages them, reducing service efficacy⁸². The lack of strong external controls on prosecutorial discretion underscores the need for internal reforms to promote accountability and ethics, demonstrating that hierarchical management can shape office culture and practices⁸³. Management effects were more important than officer attitudes in domestic violence situations,

⁷⁶ Edward F. Sherman, "Military Justice without Military Control," *The Yale Law Journal* 82, no. 7 (1973): 1398–1425, <https://doi.org/10.2307/795571>; Rosenthal, "Where Is the Justice? The Sexual Assault Crisis Plaguing the Military and a Lack of Meaningful Justice."

⁷⁷ Lingga, et.al, "Kewenangan Diskresi Kepolisian Dalam Penghentian Penyidikan"; Jefferson Hakim, "Challenging The Investigator's Investigation Termination Authority Without Public Prosecutor's Approval," *Arena Hukum* 17, no. 1 (2024): 171–89, <https://doi.org/10.21776/ub.arenahukum.2024.01701.10>.

⁷⁸ Sulistiani, et.al, "Assessment of the Investigative Objectivity in the Execution of Detention Authority under the Principle of Unity of Command in the Indonesian Military Criminal Justice System."

⁷⁹ Lopes, et.al, "Chain of Custody in Non-Prosecution Agreements: Evidentiary Filters and Legal Security in the Actions of the Public Prosecutor's Office," *Faculdade Prime*, 2025, <https://doi.org/DOI: 10.61270/2764-7641.2025.003>.

⁸⁰ Sunarjo, et.al "Legal Uncertainty for Police Members in the Limits of Positions Outside the Police," *Journal of World Science* 3, no. 12 (2024): 1587–96, <https://doi.org/10.58344/jws.v3i12.1243>.

⁸¹ Jacqueline Hodgson, "Hierarchy, Bureaucracy, and Ideology in French Criminal Justice: Some Empirical Observations," *Journal of Law and Society* 29, no. 2 (2002): 227–57, <https://doi.org/10.1111/1467-6478.00217>.

⁸² Mouhanna, Op. Cit.

⁸³ Stephanos Bibas, "Prosecutorial Regulation Versus Prosecutorial Accountability," *University of Pennsylvania Law Review* 157, no. 4 (2009): 959–1016.

Proposed Normative Reconstruction and Accountability Indicators

To clarify and reinforce investigative termination authority across criminal, military, and corruption investigations, a normative rebuilding of the legal framework is needed. Insufficient evidence and the absence of a crime are grounds for investigation termination under Article 109 of the Criminal Procedure Code⁸⁵. Challenges remain, especially at the Commission for Eradication of Corruption (KPK), where confusing regulations impede justice⁸⁶. Military police lack specific authority to end investigations, which hinders legal efficiency and impartiality. Police discretion to end investigations needs clearer guidelines to minimize misuse and assure accountability⁸⁷. Thus, a full normative reconstruction is needed to promote legal clarity, rights protection, and investigative efficiency.

In police discretion, accountability indicators are necessary to evaluate investigative termination choices' legality, objectivity, and procedural fairness. Researchers say police have broad latitude to end investigations, typically regulated internally, which raises worries about sociopolitical or economic abuse⁸⁸. Authorities should treat and make decisions fairly under procedural justice principles to build public trust and lawfulness⁸⁹. While intended for speed, early termination of judicial processes might compromise defendants' rights and investigative integrity⁹⁰. To guarantee that discretionary powers are implemented publicly and justly, effective accountability indicators are needed to protect fundamental legal norms⁹¹.

To ensure effective administration and legal compliance, military judicial procedures must integrate the idea of independence with the unity of command. Luban underlines the important relationship between military law's imperative nature and military command's legality⁹². Dopow

⁸⁴ Mengyan Dai Richard R. Johnson, "Police Enforcement of Domestic Violence Laws: Supervisory Control or Officer Prerogatives?," *Justice Quarterly*, 2014, 185–208, <https://doi.org/https://doi.org/10.1080/07418825.2014.887762>.

⁸⁵ Azizul Hakiki, "Surat Perintah Penghentian Penyidikan (SP3) Yang Diterbitkan Berdasarkan Perdamaian Antara Tersangka Dan Pelapor Dalam Delik Biasa."

⁸⁶ Prasetyoandi, et.al, "The Concept of Reforming Military Justice System Specifically in the Termination of Investigations on the Regulation of Institutions and Authority of Military Police Investigations in Indonesia."

⁸⁷ Lingga, et.al, "Kewenangan Diskresi Kepolisian Dalam Penghentian Penyidikan."

⁸⁸ Ulfah, et.al, "Penghentian Penyidikan: Tinjauan Hukum Administrasi Dan Hukum Acara Pidana"; Lingga, Ibid.

⁸⁹ Natasha et. al, "Procedural Justice in the Criminal Justice System," *Criminology and Criminal Justice*, 2020, <https://doi.org/https://doi.org/10.1093/acrefore/9780190264079.013.635>.

⁹⁰ Mauro Betancurt Palomino et al., *PROCESOS JURÍDICOS* ; n.d.

⁹¹ Petter Gottschalk, "Integrity, Objectivity, and Accountability in Private Internal White-Collar Crime Investigations: The Case of Moscow School Investigation in Norway," *Deviant Behavior*, 2017, 617–31, <https://doi.org/https://doi.org/10.1080/01639625.2017.1286180>.

⁹² DAVID LUBAN, "Military Necessity and the Cultures of Military Law," *Leiden Journal of International Law* 26, no. 2 (2013): 315–49, <https://doi.org/https://doi.org/10.1017/S092215651300006X>.

proposes a comprehensive reform plan that implements institutional and normative modifications to align military justice practices with NATO standards while upholding human rights⁹³. As Mikulka et al. note, military discipline under the rule of law emphasizes the importance of public interest and collectivism⁹⁴. Therefore, military justice systems need a unified structure that defines independent institutions' functions while maintaining command unity.

CLOSING

This study shows that Indonesia's military justice system's authority to terminate investigations and close cases is still shaped by the structural tension between investigative independence and the unity-of-command principle, demonstrating that the current normative framework does not adequately protect objectivity and accountability in decision-making. The doctrinal and institutional analysis shows that while investigators are granted discretionary space, hierarchical command relations continue to influence investigative termination, creating procedural unfairness and legal uncertainty. These findings highlight the theoretical need for tighter doctrinal boundaries that define investigative authority and prevent command-driven instructions from eroding independence. Practically, the study emphasizes strengthening internal monitoring, openness, and standardizing termination evaluation standards. To guarantee termination choices are lawful, reasonable, and in line with military justice, a normative reconstruction accompanied by structured accountability indicators is advocated. Harmonizing independence and unity of command is crucial to procedural integrity, legal subject rights, and military justice system legitimacy.

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⁹³ Viktor Dorosh, "ORGANISATIONAL-LEGAL FRAMEWORK FOR ADMINISTRATIVE RESPONSIBILITY OF MILITARY PERSONNEL IN UKRAINE IN THE CONTEXT OF EURO-ATLANTIC INTEGRATION" 355 (2025), <https://doi.org/https://doi.org/10.54929/2786-5746-2025-17-02-06>.

⁹⁴ Zdeněk Mikulka, et.al, "Measurement of Professional Value Orientation of Military Professionals," *Journal of Organizational Management Studies* 2019 (2019): 1–10, <https://doi.org/10.5171/2019.907156>.

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