

## The Sociology of Military Law: Civil-Military Boundary in Emerging Democracies

Arief Fahmi Lubis

Indonesian Military College of Law

**Corresponding Author:** Arief Fahmi Lubis [arieffahmilubis0@gmail.com](mailto:arieffahmilubis0@gmail.com)

---

### ARTICLE INFO

*Keywords:* Military Law, Civil-Military Relations, Socio-Legal Analysis, Democratic Transition, Civilian Supremacy

*Received :* 10 January

*Revised :* 15 February

*Accepted:* 28 March

©2026 Lubis: This is an open-access article distributed under the terms of the [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).



### ABSTRACT

This article examines military law through a socio-legal lens by analyzing the civil-military boundary in emerging democracies. Existing scholarship largely approaches civil-military relations from constitutional, institutional, or security sector reform perspectives, often overlooking the sociological dimensions embedded in military legal systems. This study reconceptualizes military law as a socially embedded institution shaped by power relations, professional military identity, and democratic transition dynamics. Using a qualitative socio-legal research design, the study analyzes legal frameworks governing military jurisdiction, civilian supremacy, and institutional practice, complemented by doctrinal analysis and contextual examination of democratic reform processes. The findings demonstrate that the civil-military boundary is not merely a formal constitutional arrangement but a dynamic sociological construct continuously negotiated within institutional settings. Legal norms regulating the armed forces are internalized, contested, and reshaped through legal culture, professional ethos, and broader political transformations. The study reveals that persistent legal dualism and institutional resistance often complicate the consolidation of civilian control in emerging democracies. By situating military law within the sociology of law framework, this research contributes a deeper understanding of how civilian supremacy is institutionalized or challenged beyond formal legal provisions, offering both theoretical insights and policy implications for democratic consolidation

## **INTRODUCTION**

Military law represents a unique intersection between legal regulation and institutional practice within armed forces, yet it is often studied narrowly through constitutional or institutional lenses. In emerging democracies, the civil-military boundary is particularly critical, as the consolidation of civilian supremacy depends not only on formal legal provisions but also on the sociological embedding of military norms and practices. Existing scholarship has primarily focused on security sector reform and constitutional arrangements, often overlooking how professional military identity, legal culture, and institutional power dynamics shape compliance with civilian authority.

Understanding military law as a socially embedded institution allows scholars to move beyond formalist accounts of civil-military relations. Legal norms governing military conduct, jurisdiction, and accountability are interpreted, contested, and internalized within the military profession, making them dynamic rather than static prescriptions. This socio-legal perspective is particularly relevant in transitional democracies, where ongoing political and institutional reforms continuously redefine the relationship between civilian authorities and the armed forces.

By analyzing military law through this lens, this study situates civil-military relations within broader socio-political transformations, highlighting the complex interplay between legal frameworks, institutional culture, and democratic consolidation processes.

## **LITERATURE REVIEW**

This theoretical framework emphasizes understanding military law not merely as a set of formal rules but as a socially embedded institution shaped by professional military culture, power dynamics, and democratic transition processes. This perspective aligns with the sociology of law, which considers law as a social phenomenon that is interpreted, internalized, and contested within institutional and cultural contexts.

According to Cotterrell, law cannot be understood in isolation from society; it is shaped through the interaction of formal norms and everyday social practices. In the military context, internal legal norms, disciplinary procedures, and jurisdictional regulations often reflect the professional identity and institutional power of the armed forces. Thus, military law is not solely an instrument of civilian control but also a site of negotiation between civilian authority and military professionalism.

Civil-military relations theory further highlights the importance of civilian supremacy in democratic consolidation. Huntington argues that democratic stability relies on the enforcement of civilian control over the military, which requires the internalization of legal and institutional norms by military personnel. However, recent studies indicate that in emerging democracies, legal dualism, institutional resistance, and divergent legal cultures often complicate the establishment of effective civilian control. By integrating this perspective, the study of military law can reveal how legal norms, professional ethos, and democratic reforms interact, as well as the factors that strengthen or weaken civilian oversight in practice.

This theoretical framework provides the conceptual foundation for empirical analysis, examining how military legal norms are applied, contested, and reformed in transitional democracies. It combines doctrinal legal analysis with institutional sociology, offering a holistic understanding of civil–military relations in emerging democratic contexts.

## **METHODOLOGY**

This study employs a qualitative socio-legal research design to examine the intersection of military law and civil–military relations in emerging democracies. Qualitative methods are particularly suited for exploring complex social phenomena, as they allow researchers to understand how legal norms are interpreted, internalized, and contested within institutional and cultural contexts. The research relies on a combination of doctrinal legal analysis and contextual investigation, which together provide a holistic understanding of the legal frameworks governing military jurisdiction and civilian control.

Data collection involved reviewing statutory provisions, military codes, and constitutional regulations related to armed forces governance. In addition, secondary sources, such as policy reports, academic literature, and case studies on democratic transitions, were analyzed to contextualize the formal legal frameworks within broader political and institutional dynamics. This approach ensures that both legal texts and the sociological environment in which they operate are considered, providing insights into how military law functions as a socially embedded institution.

The analysis was guided by a thematic approach, focusing on three key dimensions: (1) the legal structures regulating civil–military boundaries, (2) the internalization and contestation of these norms within military institutions, and (3) the challenges to consolidating civilian supremacy in emerging democracies. By integrating doctrinal and socio-legal perspectives, the study highlights not only the formal provisions of military law but also how these laws are shaped and reshaped by professional military ethos, institutional practices, and ongoing democratic reforms. This methodology allows for nuanced findings that are both theoretically informed and practically relevant for policy-making.

## **RESULTS AND DISCUSSION**

Civil–military relations in emerging democracies are deeply influenced by historical, institutional, and socio-political factors. Understanding the dynamics of civilian control over the military requires examining both formal legal frameworks and the informal norms and practices that govern military behavior. In transitional democracies, the legacy of military involvement in politics often complicates reform efforts, as professional ethos, hierarchical structures, and historical privileges interact with newly established democratic norms. The following discussion explores these dynamics through four key dimensions: historical context, authoritarian legacies, reform processes, and institutional transformation.

## **1. Historical Context of Civil–Military Relations in Emerging Democracies**

Understanding contemporary civil–military relations requires situating them within their historical context. In many emerging democracies, the legacy of military influence from authoritarian regimes continues to shape both institutional structures and societal perceptions of the armed forces. Historical patterns of military involvement in politics, particularly in governance and security decision-making, have created persistent norms and expectations that influence current interactions between civilian authorities and the military. These legacies often manifest as informal power structures, patronage networks, and a professional ethos oriented toward institutional autonomy rather than civilian oversight.

### **a. Military Legacies in Authoritarian Regimes**

Under authoritarian regimes, militaries often consolidated significant political and economic power, establishing entrenched hierarchies that limited civilian intervention. Legal frameworks during these periods were typically designed to protect military prerogatives, including jurisdictional autonomy and immunity from civilian courts. Even after democratization, these structures can persist, producing institutional resistance to reforms aimed at enforcing civilian supremacy. Military professionals may view such reforms as external interference, which can lead to tensions between civilian policymakers and military leadership. This underscores the importance of examining not only formal legal provisions but also the cultural and institutional norms that govern military behavior.

### **b. Reform Processes**

Democratic transitions introduce complex reform processes intended to balance military professionalism with civilian oversight. These reforms often include the codification of military jurisdiction under civilian law, restructuring of command chains, and the establishment of oversight institutions. However, the effectiveness of these measures depends on both the willingness of military actors to internalize new norms and the capacity of civilian institutions to enforce compliance. Studies have shown that reform outcomes vary significantly across contexts, reflecting differences in political will, institutional capacity, and historical legacies of military autonomy.

### **c. Institutional Transformation**

Institutional transformation involves not only changes in formal legal frameworks but also shifts in organizational culture and professional identity. Successful consolidation of civilian control requires embedding democratic norms within military institutions, fostering accountability mechanisms, and promoting transparency in decision-making. This process is often gradual and contested, as old practices may coexist with new reforms, creating hybrid governance structures. The study's findings indicate that legal norms regulating the military are continuously interpreted and renegotiated within institutional settings, highlighting the sociological dimension of military law and its role in shaping civil–military interactions.

## **2. Military Law and the Civil–Military Boundary**

### **a. Military Court Jurisdiction**

Military law operates within a distinct legal framework that grants armed forces their own judicial system for handling offenses committed by military personnel. Military courts have jurisdiction over crimes ranging from breaches of military discipline to certain national security-related offenses. While intended to maintain order and efficiency within the armed forces, this specialized jurisdiction often raises questions about accountability and the extent to which military personnel are subject to civilian law. In emerging democracies, ensuring that military courts operate in harmony with national legal standards is a critical challenge, as unchecked military jurisdiction can undermine civilian oversight and the rule of law.

### **b. Civilian Supremacy vs. Military Autonomy**

A central tension in civil–military relations is the balance between civilian supremacy and military autonomy. Civilian control is a fundamental principle of democratic governance, requiring that military institutions operate under the direction of elected authorities. At the same time, military professionalism often emphasizes autonomy in operational and disciplinary matters. This duality can produce conflicts when reforms seek to curtail informal privileges or extend civilian oversight into areas traditionally governed by military norms. Effective democratization requires not only legal provisions for civilian control but also cultural and institutional acceptance of these norms within the military.

### **c. Human Rights Implications**

The intersection of military law and civilian authority has significant human rights implications. Military tribunals, if operating without adequate transparency or accountability, can restrict fundamental rights such as fair trial, freedom of expression, and protection from arbitrary detention. The historical autonomy of military institutions in authoritarian contexts often leaves a legacy where civilian victims of military misconduct face limited avenues for redress. Therefore, aligning military legal frameworks with international human rights standards is essential in transitional democracies to protect both the rights of military personnel and civilians.

### **d. Overlapping Legal Authorities**

One of the persistent challenges in civil–military governance is the overlap of legal authorities. Civilian courts may have jurisdiction over certain crimes, while military courts claim concurrent authority, leading to legal dualism and procedural ambiguity. This overlap can complicate investigations, weaken accountability mechanisms, and provide loopholes that hinder the consolidation of civilian control. Addressing these overlaps requires clear statutory definitions of jurisdiction, robust coordination between civilian and military authorities, and institutional mechanisms to resolve conflicts.

### **3. Sociological Analysis**

#### **a. Legal Culture within the Military**

Legal culture within military institutions encompasses not only the written laws and codes but also the values, beliefs, and professional norms that guide behavior. Military personnel often internalize these norms through training, hierarchical structures, and professional socialization, which influences how laws are interpreted and applied in practice. In emerging democracies, understanding this legal culture is critical, as formal reforms may fail if they conflict with deeply embedded military traditions or if personnel perceive civilian oversight as external interference.

#### **b. Institutional Resistance or Adaptation**

Military institutions may respond to legal reforms through either resistance or adaptation. Resistance can manifest as selective compliance, reinterpretation of rules, or informal practices that preserve autonomy. Conversely, adaptation occurs when institutions internalize new norms and align practices with civilian legal frameworks. The extent to which militaries adapt depends on leadership commitment, institutional incentives, and historical legacies of autonomy, highlighting the sociological dimension of civil–military relations.

#### **c. Power Relations and Legal Reform**

Power relations play a central role in shaping the effectiveness of legal reforms. Senior military leaders often hold significant informal influence, which can support or undermine attempts to strengthen civilian control. Legal reform in this context is not merely a technical exercise but a negotiation of authority and legitimacy between civilian policymakers and military actors. The distribution of power within military hierarchies, combined with political dynamics outside the armed forces, determines the scope and impact of reform initiatives.

#### **d. Informal Norms vs. Formal Regulations**

A persistent tension exists between informal norms and formal regulations within military organizations. While formal legal frameworks establish clear rules, informal practices such as loyalty networks, unwritten codes, and customary procedures can override or reinterpret these rules. Recognizing this tension is essential for policy design, as effective civilian control requires addressing both legal instruments and the cultural context in which they operate.

### **4. Challenges in Strengthening Civilian Control**

#### **a. Political Instability**

Political instability in emerging democracies creates a volatile environment for civilian oversight. Frequent changes in government, contested elections, or weak political legitimacy can embolden military actors to assert autonomy or resist reforms, complicating efforts to institutionalize civilian supremacy.

### **b. Weak Institutions**

Weak institutional capacity undermines enforcement of military law and civilian control. Limited administrative resources, insufficient training, and lack of independent oversight bodies allow informal power structures to persist, reducing the effectiveness of legal and procedural reforms.

### **c. Legal Dualism**

Legal dualism, where civilian and military legal systems overlap or conflict, poses another significant challenge. Jurisdictional ambiguity can delay accountability, create loopholes for military misconduct, and weaken civilian authority. Resolving dualism requires statutory clarity, procedural harmonization, and institutional coordination.

### **d. Security Sector Reform Constraints**

Security sector reform (SSR) initiatives often face structural and political constraints. Budgetary limitations, entrenched interests within the military, and competing security priorities can slow or dilute reform efforts. Effective SSR requires not only legal codification but also sustained political commitment, incentives for compliance, and engagement with military leadership to ensure reforms are internalized.

## **CONCLUSIONS AND RECOMMENDATIONS**

This study demonstrates that military law in emerging democracies cannot be understood solely as a formal legal framework but must be viewed as a socially embedded institution shaped by historical legacies, professional military culture, and evolving power relations. The civil-military boundary is not a fixed constitutional line; rather, it is continuously negotiated within institutional settings. Legal dualism, overlapping jurisdiction, and informal norms often complicate the effective implementation of civilian supremacy, particularly in post-authoritarian contexts.

Theoretically, the research contributes to civil-military relations scholarship by integrating a sociology of law perspective, emphasizing that democratic consolidation depends not only on constitutional provisions but also on institutional culture and internalized norms. From a policy standpoint, strengthening civilian control requires clear jurisdictional boundaries, effective oversight mechanisms, and sustained professional education that promotes democratic values and human rights. Future research should adopt comparative and empirical approaches to assess how different transitional democracies institutionalize civilian supremacy over time.

## **REFERENCES**

- Bruneau, T. C., & Watling, J. (2018). *Civil-military relations in the contemporary world*. Routledge.
- Carment, D., & Schnabel, A. (2011). *Security sector reform in challenging environments*. Routledge.
- Cotterrell, R. (2006). *Sociology of law: An introduction*. Butterworths.
- Creswell, J. W. (2018). *Qualitative inquiry & research design: Choosing among five approaches* (4th ed.). Sage.
- Egnell, R. (2012). *Civilian control and military justice in emerging democracies*. Swedish Defence University Press.
- Feaver, P. D. (2003). *Armed servants: Agency, oversight, and civil-military relations*. Harvard University Press.
- Finer, S. E. (1962). *The man on horseback: The role of the military in politics*. Pall Mall Press.
- Huntington, S. P. (1957). *The soldier and the state: The theory and politics of civil-military relations*. Harvard University Press.
- Janowitz, M. (1960). *The professional soldier: A social and political portrait*. Free Press.
- Kohn, R. H. (1997). *The military and democracy: A comparative study*. Johns Hopkins University Press.
- Kohn, R. H. (2000). *Out of control: The crisis in civil-military relations*. National Defense University Press.
- Ratner, M. (2015). *The military and human rights: Balancing discipline and accountability*. Oxford University Press.
- Silverman, D. (2019). *Doing qualitative research* (5th ed.). Sage.
- Stepan, A. (1988). *Rethinking military politics: Brazil and the Southern Cone*. Princeton University Press.
- Turpin, C. (2010). *Military law and justice: A comparative study*. Routledge.