

THE INDEPENDENCE OF THE INDONESIAN NATIONAL POLICE IN THE INDONESIAN CONSTITUTIONAL SYSTEM: BETWEEN AN INSTRUMENT OF THE STATE AND AN INSTRUMENT OF POWER

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Abstract

This article examines the independence of the Indonesian National Police in the Indonesian constitutional system by examining the tension between the normative position of the Indonesian National Police as a state apparatus and its structural position directly under the President. This issue is important because Article 30 paragraph (4) of the 1945 Constitution and Law Number 2 of 2002 affirm the Indonesian National Police as a state law enforcement instrument, but in institutional practice, this position is vulnerable to influence by the interests of power. This research uses a normative legal research method with a statutory, conceptual, and case approach. The results of the research indicate that the current institutional construction of the Indonesian National Police contains ambivalence because on the one hand it is in line with the presidential system, but on the other hand it opens up space for political intervention that can affect the functional independence of the Indonesian National Police. This ambivalence is evident in the mechanism for appointing and dismissing the Chief of Police which involves the approval of the DPR and the practice of placing active Indonesian National Police members in civilian positions which was then limited by Constitutional Court Decision Number 114/PUU-XXIII/2025. This article argues that the ideal construction of Polri independence is to maintain Polri under the President with strict limitations on the administrative and general policy domains, redesign the involvement of the DPR from approval to consideration, and emphasize the separation of active Polri members from civilian positions so that Polri remains consistent in functioning as a state instrument, not a tool of power.

Keywords: *instruments of power, instruments of the state, independence of the National Police, rule of law.*

INTRODUCTION

Within Indonesia's constitutional system, the Indonesian National Police holds a crucial position as it is directly responsible for maintaining public safety and order, enforcing the law, and protecting citizens. This position is affirmed in Article 30, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that the Polri is a state instrument that maintains public security and order, tasked with protecting, safeguarding, and serving the public, as well as enforcing the law. This constitutional provision was further clarified in Law No. 2 of 2002 on the National Police of the Republic of Indonesia, which positions the National Police as the state's law enforcement agency. Normatively, this formulation indicates that the National Police is designed as a professional institution operating in accordance with the law and dedicated to serving the broader public interest. In this context, the existence of the Polri within a rule-of-law state should be understood as a constitutional instrument to ensure justice, legal certainty, and the protection of citizens' rights.¹ Nevertheless, these normative provisions are not entirely consistent with the institutional design of the National Police in the practice of governance. On the one hand, the National Police is defined as a state instrument that must be neutral, professional, and subject to the law. On the other hand, structurally, the National Police reports directly to the President as the holder of executive power.² This arrangement raises fundamental questions regarding the degree of independence of the National Police, particularly

¹ Purba, A. M., Suseno, J. J. B., Tamba, D. G., Butar, M. B., & Sinambela, J. (2024). Optimalisasi Peran Polisi dalam Penegakan Hukum Berbasis Humanis dan Profesionalisme. *Jurnal Hukum Lex Generalis*, 5(12), 1-16.

² Khaliq, A. (2025). Tinjauan Kritis Kekuasaan Presiden Terhadap Polri Berdasarkan Teori Trias Politica. *Journal Justice*, 7(2), 83-98.

when the institution carries out law enforcement functions in cases that intersect with political power. In the context of a democratic state, the structural proximity between law enforcement agencies and the executive branch can create a risk of intervention, whether in the form of direct influence or indirect pressure on policy direction and law enforcement actions.³ Therefore, the relationship between the President and the National Police is a crucial factor in determining whether the National Police truly functions as an instrument of the state or is, in fact, susceptible to becoming an instrument of power.

This issue cannot be separated from the principles of the rule of law, which require the supremacy of law, the limitation of power, and the protection of human rights. In a democratic state governed by the rule of law, law enforcement agencies must possess professional independence so that legal processes are not distorted by political, economic, or power-related interests.⁴ Independence here does not mean that the institution is free from oversight, but rather that it has the autonomy to carry out its legal functions objectively, impartially, and accountably. The National Police must remain within the framework of public accountability, yet at the same time must not be placed in a position where its authority is easily influenced by the interests of the ruling government. From this perspective, the issue of the National Police's independence is not merely a matter of institutional administration, but concerns the very quality of the rule of law itself in ensuring that law enforcement serves the law, not power.⁵

In this framework, a strong tension arises between the role of the National Police as an instrument of the state and the possibility of this institution shifting into an instrument of power. As a state instrument, the National Police should carry out its constitutional functions for the public interest, the protection of society, and the upholding of the law. However, as an institution within the orbit of executive power, the National Police also constantly faces the potential for political tug-of-war, particularly in handling sensitive cases or those involving the ruling elite. This situation can foster the perception that the law is applied selectively or is not entirely free from political influence. When such perceptions strengthen, public trust in the principles of equality before the law, justice, and the neutrality of law enforcement institutions will erode. Therefore, it is important to critically examine the boundary between the National Police's function as a legitimate state instrument within a democratic system and the risk of its deviation into a pragmatic instrument of power.

From a historical perspective, this issue has deep roots in the history of police reform in Indonesia. The reform of the Indonesian National Police (Polri) emerged from public demands following the New Order era to end the militaristic nature that had developed when the police were still part of the structure of the Indonesian Armed Forces (ABRI). This legacy was deemed incompatible with the police's role as a civilian institution tasked with serving the public and upholding the law.⁶ Therefore, separating the National Police from the Armed Forces became a key agenda of state reform, with the aim of establishing a professional, democratic, and more accountable police force. The enactment of Law No. 2 of 2002 was part of that spirit, namely to reorganize the position, functions, and orientation of the Polri as a civilian institution within a state governed by the rule of law. However, these structural and normative reforms have not fully resolved issues regarding organizational culture, patterns of power relations, and the effectiveness of oversight over police performance.

In recent developments, the issue of police reform has once again garnered significant attention following a series of cases that have shaken public confidence in the institution's integrity. Police reform is no longer understood merely as an agenda for separation from the military, but also as an urgent need to strengthen professionalism, transparency, accountability, and the institution's resilience against political interference. Major cases in recent years have served as reference points for public evaluation, indicating that the issue of police reform remains systemic and unresolved. In this context, the establishment of the Commission for the Acceleration of Police Reform signifies a political acknowledgment that the overhaul of the National Police must be carried out more comprehensively, not only in terms of institutional technical aspects but also regarding organizational culture, oversight mechanisms, and the orientation of legal services. This development demonstrates that the issue of the National Police's independence

³ Ramdhany, D. M., Budiono, B., Junaedi, D., Ariyanti, J. M., Wiradirja, I. R., & Haspada, D. (2025). Dinamika Politik dan Hukum dalam Mempengaruhi Penegakan Hukum di Indonesia. *Themis: Jurnal Ilmu Hukum*, 3(1), 47-56.

⁴ Rifandanu, F. (2024). Urgensi Penataan Kembali Lembaga-Lembaga Negara Independen Dalam Mewujudkan Sistem Pemerintahan Yang Demokratis Dan Konstitusional. *Datin Law Jurnal*, 5(1), 10-27.

⁵ Kurniawan, H. F. (2025). EKSISTENSI KEPOLISIAN RI DI TENGAH DISRUPSI POLITIK DAN CITRA INSTITUSI. *Journal of Syntax Literate*, 10(6).

⁶ Suryana, N., Habibullah, A. Z., & Alifya, T. W. (2025). HAK ASASI MANUSIA DI BALIK LENCANA: POTRET 20 TAHUN LEBIH REFORMASI KEPOLISIAN. *Aliansi: Jurnal Politik, Keamanan Dan Hubungan Internasional*, 4(2), 114-121.

remains highly relevant within the dynamics of Indonesia's state governance.⁷ Based on the above discussion, a study on the independence of the Indonesian National Police (Polri) within Indonesia's constitutional system is of critical importance and must be conducted without delay. Normatively, the 1945 Constitution and Law No. 2 of 2002 have established the Polri as a state law enforcement agency tasked with protecting, safeguarding, and serving the public, as well as upholding the law. However, the structural position of the National Police, which is directly under the President, indicates institutional ambivalence that could affect its independence. On one hand, the National Police is required to be professional and neutral as an instrument of the rule of law; on the other hand, its structural proximity to the executive branch leaves room for intervention that could shift the institution's orientation. On this basis, this study is important for examining the relationship between the constitutional foundation, institutional design, and the dynamics of Polri reform, while also formulating an ideal construct of Polri's independence so that it continues to function as an instrument of the state within the framework of Indonesia's democratic rule of law.

METHOD

This study employs a normative legal research method utilizing a statutory approach, a conceptual approach, and a case-based approach.⁸ The statutory approach is used to examine provisions in the 1945 Constitution, Law No. 2 of 2002 on the National Police of the Republic of Indonesia, and other regulations relevant to the status and independence of the National Police within Indonesia's constitutional system. The conceptual approach is used to analyze the concepts of the rule of law, the independence of state institutions, the presidential system, and the relationship between state apparatus and organs of power. Meanwhile, the case study approach is used to examine Constitutional Court Decision No. 114/PUU-XXIII/2025 as part of legal developments concerning the limits of the National Police's professionalism and neutrality. The legal materials used consist of primary, secondary, and tertiary sources obtained through literature review. All of these legal materials were analyzed qualitatively using descriptive-analytical techniques and legal interpretation to produce a systematic, logical argumentation aligned with the research problem.

RESULTS AND DISCUSSION

The Role of the Indonesian National Police in the Indonesian Constitutional System

The position of the Indonesian National Police as an instrument of the state is firmly grounded in Article 30, paragraph (4) of the 1945 Constitution, which states that the Indonesian National Police is an instrument of the state responsible for maintaining public security and order, tasked with protecting, safeguarding, and serving the public, as well as enforcing the law. This formulation is important because it positions the National Police not merely as an administrative apparatus of the government, but as a constitutional institution directly mandated by the Constitution to carry out fundamental public functions within a state governed by the rule of law.⁹ From a constitutional law perspective, the term "state instrument" indicates that the institutional orientation of the Polri must be directed toward the interests of the state in the constitutional sense, namely the protection of citizens, the enforcement of the law, and the maintenance of public order.

This constitutional provision is further elaborated in a more operational manner in Law No. 2 of 2002 on the National Police of the Republic of Indonesia. This law not only reiterates the formulation of the National Police's functions as stipulated in the 1945 Constitution, but also places them within the framework of more concrete objectives for policing. Article 4 of Law No. 2 of 2002 states that the objective of the National Police is to achieve domestic security, which encompasses the maintenance of public safety and order, the upholding of law and order, the provision of protection, care, and service to the public, and the fostering of public peace while upholding human rights. This provision demonstrates that the Polri was, from the outset, conceived as an instrument of the rule of law tasked with maintaining a balance between order, justice, and the protection of citizens' rights, rather than merely as a tool for the government to exercise control.¹⁰

⁷ Lubis, R., Hadiyanto, A., & Bhakti, R. T. A. (2026). Strategi Polri dalam Penegakan Hukum Humanis untuk Meningkatkan Kepercayaan Publik di Kepulauan Riau. *JURNAL USM LAW REVIEW*, 9(2), 809-828.

⁸ Rijal, S., & Ananda, A. I. (2025). Analisis Yuridis Pengalihan Status Kepemilikan dan Pengelolaan Pelabuhan dari Pemerintah Pusat ke Pemerintah Provinsi (Studi Kasus Pada Pelabuhan Dawi-Dawi Kabupaten Kolaka). *JOSH: Journal of Sharia*, 4(01), 53-68.

⁹ Anshar, R. U., & Setiyono, J. (2020). Tugas dan Fungsi Polisi sebagai penegak hukum dalam Perspektif Pancasila. *Jurnal Pembangunan Hukum Indonesia*, 2(3), 359-372.

¹⁰ Ananda, A. I., & Natsir, M. Y. (2020). Peran Kepolisian Dalam Penanganan Unjuk Rasa (Uu No 2 Tahun 2002 Tentang Kepolisian Republik Indonesia). *Jurnal Syariah Hukum Islam*, 3(2), 92-100.

When read systematically, Article 30(4) of the 1945 Constitution and Law No. 2 of 2002 establish a normative framework that positions the National Police at the intersection of security and law enforcement functions. This characteristic distinguishes the National Police from ordinary government agencies, as its duties do not stop at state administration but directly address aspects of rights protection, public order, and the legal process. Article 13 of Law No. 2 of 2002 even outlines the three primary duties of the National Police: maintaining public security and order, enforcing the law, and providing protection, care, and service to the public. This framework of norms indicates that law enforcement is not the sole focus of the Polri; it must be carried out in tandem with public service and the maintenance of social order. Therefore, normatively, the Polri is a state-mandated institution with a multidimensional nature, yet all its dimensions remain centered on the law and the public interest.

From a constitutional theory perspective, the use of the term “state apparatus” in the 1945 Constitution carries significant legal implications. This term distinguishes the National Police from an “instrument of power” because the source of legitimacy for its actions is not the will of those in power, but rather constitutional norms and laws. This means that all exercise of police authority must be legally accountable and must be directed toward the public interest, not the political interests of the ruling government. Another consequence is that professionalism, neutrality, and adherence to human rights are not merely institutional ethics but integral to the normative framework of the National Police itself. The general explanation of Law No. 2 of 2002 also indicates that the enactment of this law arose from the need to align the police’s role with the principles of democracy, the rule of law, and the protection of citizens’ rights following the post-reform constitutional changes.¹¹

Furthermore, the normative status of the National Police as an instrument of the state must also be understood within the framework of the state’s objectives, as reflected in the Preamble to the 1945 Constitution, to protect the entire Indonesian nation and all Indonesian citizens. In this context, the National Police’s function is not only to maintain stability but also to ensure the state’s presence in providing a sense of security and legal certainty to the public. In this regard, protection, care, and public service hold an equal standing with law enforcement within the constitutional and statutory framework. The equivalence of these functions underscores that the Police’s normative orientation must not be solely repressive but must embody public service grounded in justice. Thus, Indonesia’s positive legal framework effectively positions the National Police as a civilian institution that exercises the state’s coercive functions in a limited, measured manner, and in accordance with the principles of the rule of law and respect for human rights.¹²

Nevertheless, a normative interpretation of the National Police’s status cannot be limited to a textual analysis alone. Precisely because the 1945 Constitution and Law No. 2 of 2002 have established the National Police as a state instrument for law enforcement, its entire institutional design and the exercise of its authority must always be measured against this normative mandate. In other words, the Polri’s status as a state instrument serves as a constitutional benchmark to assess whether this institution continues to operate in the service of the law, society, and the public interest, or whether it has deviated toward a power-oriented agenda. From this, it can be understood that the normative position of the National Police contains binding basic standards: the National Police must be neutral, professional, accountable, respect human rights, and enforce the law impartially. These standards then become the starting point for assessing the next issue, namely how the structural position of the National Police under the President affects its institutional independence in the practice of state administration.

The Implications of the Indonesian National Police’s Structural Subordination to the President for Institutional Independence

Normatively speaking, the issue of the National Police’s independence cannot be separated from the structural design that places this institution directly under the President. Article 8(1) of Law No. 2 of 2002 stipulates that the National Police of the Republic of Indonesia is under the President, while paragraph (2) states that the National Police is led by the Chief of the National Police, who, in the performance of his duties, is accountable to the President in accordance with the laws and regulations. This formulation demonstrates that, organizationally, the National Police is situated within the sphere of executive power, not as an institution separate from the branches of

¹¹ Bastian, A., Akili, R. H., & Kadir, Y. (2024). Netralitas Kepolisian Republik Indonesia Pada Penyelenggaraan Pemilihan Umum. *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL*, 3(2), 96-104.

¹² Ulfah, R. T., Hanafi, M. S. M., Febryan, Z. B., & Putri, A. S. (2026). implementasi etika profesi kepolisian dalam penegakan hukum dan pelayanan masyarakat polda jawa barat. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 4(02), 1-27.

government.¹³ In the context of a rule-of-law state, such an arrangement can indeed be understood as a means of placing security and public order functions within the realm of government. However, from the perspective of institutional independence, this position simultaneously raises serious questions regarding the extent to which the National Police's professional autonomy can be maintained when its chain of command is directly rooted in the President.

The structural position of the National Police under the President essentially creates a strong subordinate relationship between the National Police and the head of government. In such a relationship, the President not only serves as the holder of executive power under Article 4, paragraph (1) of the 1945 Constitution, but also becomes the focal point of the National Police's administrative accountability. Consequently, the independence of the National Police has never been fully structural in nature; at best, it can only be maintained at the functional level. This means that the National Police's freedom to enforce the law must always be negotiated amidst the reality that this institution is part of the executive structure. This situation differs from institutions that were designed from the outset to be more separate from the government. Therefore, the relationship between the President and the National Police contains an ambivalence that, on the one hand, facilitates government coordination and security stability, but on the other hand, has the potential to create the perception or reality that law enforcement is not entirely free from the influence of political power.¹⁴

In a democratic state governed by the rule of law, the main issue is not merely whether the National Police is under the President, but rather how that position influences the direction in which police authority is exercised. The National Police possesses extensive authority, ranging from preliminary investigations, criminal investigations, and the exercise of discretion to the use of coercive measures in maintaining public safety. If an institution with such extensive authority is in a structurally close relationship with the seat of power, the risk of political intervention and influence becomes greater. Such intervention does not necessarily take the form of explicit orders but can manifest as political expectations, bureaucratic loyalty, or pressure to align law enforcement policies with the government's interests. Therefore, the independence of the National Police in this context must be understood as an institutional problem rooted in the design of the state's governance structure, not merely as a matter of personal ethics among officials or the professionalism of individual police officers.¹⁵

Another implication of this structural position is the emergence of tension between the National Police's role as a law enforcement agency and as a government apparatus in the security sector. In theory, law enforcement demands objectivity, impartiality, and the courage to act regardless of the political standing of the subject of the law. However, as an institution accountable to the President, the National Police operates within a power structure rife with political interests. This tension becomes increasingly evident when the National Police handles cases with high political stakes, involving government elites, electoral contests, or regime stability. In such situations, the public is quick to question the functional independence of the National Police. From a constitutional law perspective, this issue demonstrates that the design of structural subordination to the President can weaken the perception of the institution's neutrality, even when, normatively, the National Police is still declared to be a state instrument that must work for the law and the public interest.¹⁶

The issue of independence becomes even more complex when considered in relation to the mechanisms for appointing and dismissing the National Police Chief. Article 11(1) of Law No. 2 of 2002 stipulates that the National Police Chief is appointed and dismissed by the President with the consent of the House of Representatives. This provision underscores that, although the National Police is under the President's authority, the President does not have full authority to independently determine its highest leadership. From a checks and balances perspective, the DPR's involvement can be understood as an effort to control a strategic position that holds the state's coercive authority. However, from the perspective of the presidential system, this arrangement poses a problem because a

¹³ Nasser, M. (2021). Peran Komisi Kepolisian Nasional Dalam Pengawasan Fungsional Polri. *Jurnal Hukum Sasana*, 7(1), 96-116.

¹⁴ Tamrin, H. (2023). Menyoal kedudukan Polri dalam sistem ketatanegaraan Indonesia sebagai negara demokrasi. *Jurnal Legalitas*, 1(1), 87-94.

¹⁵ Marasabessy, F. (2024). Pengaruh cawe-cawe presiden terhadap netralitas Polri di Pilpres tahun 2024. *Islamic Banking & Economic Law Studies (I-BEST)*, 3(1), 1-11.

¹⁶ Abdul, H. L. O., & Anugerah, W. (2025). NETRALITAS KEPOLISIAN REPUBLIK INDONESIA PADA PEMILIHAN UMUM (PEMILU). *Jurnal Ilmu Hukum Kanturuna Wolio*, 166-176.

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position that is organizationally under the President is also dependent on the approval of the legislative body.¹⁷ As a result, the National Police's institutional accountability line is not entirely singular, and this is where the dialectic between the need for democratic oversight and the consistency of the presidential system begins to emerge. This dialectic becomes increasingly clear because, in practice, the process of appointing and dismissing the National Police Chief takes place through political mechanisms in the House of Representatives, including a fit-and-proper test. Technically, the appointment of the National Police Chief begins when the President proposes a candidate to the House of Representatives, after which the House grants approval through the fit-and-proper test, and only then can the President swear the candidate in.¹⁸ This arrangement prevents the President's prerogative from being fully exercised and leads to a shift from an executive-heavy to a legislative-heavy system, although the Constitutional Court, in Decision No. 22/PUU-XIII/2015, stated that the DPR's involvement is not a deviation from the presidential system but rather part of the checks and balances mechanism.¹⁹

Upon closer scrutiny, the House of Representatives' involvement in the appointment and dismissal of the National Police Chief does indeed have the potential to undermine the consistency of Indonesia's presidential system. In a presidential system, officials who report directly to the President should ideally fall within the scope of the government's organizational structure, as determined by the President as the holder of executive power. When the DPR is granted the authority to approve the filling of such a position, the process no longer remains entirely within the realm of government administration but enters the realm of inter-institutional political bargaining. The risk of this model is the politicization of the National Police Chief position, whether during the nomination, approval, or dismissal stages. It is not surprising that academic discourse has raised the view that the DPR's involvement should be limited to providing input, not approval, so that the function of oversight remains intact without obscuring the fundamental presidential principle that officials subordinate to the President should be appointed by the President.²⁰

From the perspective of institutional independence, a mechanism involving both the President and the House of Representatives places the National Police Chief in a position vulnerable to pressure from two opposing political poles. On the one hand, the National Police Chief leads an institution that is structurally accountable to the President. On the other hand, the process of his appointment and even his dismissal cannot be separated from the approval of the DPR. This situation can lead to politically divided loyalties, or at least the perception that the position of National Police Chief is formed through a compromise among the country's political forces.²¹ In the long term, such conditions have the potential to influence the institutional orientation of the National Police, as its highest leadership is selected through a process that is not entirely technocratic. Therefore, the issue of the National Police's independence does not merely concern its status "under the President," but also how the design of the appointment process for its top leadership actually adds a dimension of politicization that can affect the institution's professionalism and impartiality.²²

Based on the above discussion, it is clear that the structural position of the National Police under the President carries ambivalent implications for institutional independence. On the one hand, this model provides a clear basis for coordination in the administration of government and national security. On the other hand, however, it places the National Police too close to the center of executive power, so that its functional independence is constantly at odds with its structural subordination. This tension is further complicated by the mechanism for appointing and dismissing the National Police Chief, which requires the approval of the House of Representatives (DPR). While this is justified as a system of checks and balances, it simultaneously indicates a certain deviation from the presidential logic that demands clarity in the executive chain of command. Thus, the main issue is not merely a matter of who oversees the

¹⁷ Muklis, M., & Ahda, M. K. M. (2023). Persetujuan Dewan Perwakilan Rakyat Dalam Pengangkatan dan Pemberhentian Kepala Kepolisian Negara Republik Indonesia Dalam Sistem Presidensial di Indonesia. *Legalitas: Jurnal Hukum*, 14(2), 265-276.

¹⁸ Fatimah, S., Arif, M. Z., Day, G. S. S., & Zayyanurroihan, M. (2025). POLITIK HUKUM TATA TERTIB DPR TENTANG PENCOPOTAN HAKIM MK, MA, KPK, DAN KAPOLRI: ANALISIS KEWENANGAN DAN IMPLIKASI TERHADAP INDEPENDENSI LEMBAGA NEGARA. *Wijaya Putra Law Review*, 4(2), 217-242.

¹⁹ Yogeta, Y., & Akhmaddhian, S. (2025). Analisis Kritis terhadap Putusan Mahkamah Konstitusi atas Pengujian Materiil Undang-Undang tentang Kepolisian. *Logika: Jurnal Penelitian Universitas Kuningan*, 16(02), 207-216.

²⁰ Nikmat, M., Kosasih, A., & Masril, M. (2021). Analisis Yuridis Pengangkatan dan Pemberhentian Kepala Polisi Republik Indonesia Menurut Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia dan Siyasah Dusturiyah. *Al Ijarah: Jurnal Pemerintahan dan Politik Islam*, 6(2), 218-236.

²¹ Darry, M., & Asri, D. (2022). Problematika netralitas Polri di era Jokowi: Keterlibatan dalam politik praktis dan bisnis. *Jurnal Politik Indonesia*, 8(1).

²² Sari, A. V., & Nusa, D. R. F. (2025). Crisis of Public Trust in Law Enforcement Agencies: TNI, Polri, and Fire Department under the Scrutiny of Law and Political Power. *Perkara: Jurnal Ilmu Hukum dan Politik*, 3(2), 964-977.

National Police, but rather how the existing institutional design still leaves room for intervention, politicization, and ambiguity regarding accountability, which can undermine the National Police's independence as the state's law enforcement agency.

The Ideal Framework for the Independence of the Indonesian National Police within the Indonesian Constitutional System

The ideal framework for the independence of the National Police within Indonesia's constitutional system must be based on two premises that should not be simplistically pitted against one another. First, according to Article 30, paragraph (4) of the 1945 Constitution, the National Police is a state apparatus that carries out the functions of security, protection, service, and law enforcement. Second, according to Article 4, paragraph (1) of the 1945 Constitution, the President holds executive power, so that, constitutionally, the domestic security sector cannot be completely separated from the President's responsibility.²³ From this perspective, the most realistic model is not to completely separate the National Police from the President's sphere of influence, but rather to design a form of relationship that allows for continued governmental oversight without sacrificing the professional independence of law enforcement. In other words, the ideal independence of the National Police is not absolute independence, but functional independence protected by norms, procedures, and oversight that prevent political interference in the performance of police duties.

On that basis, the position of the National Police under the President can essentially still be maintained as a constitutional design choice consistent with Indonesia's presidential system. In a presidential system, the President must indeed have a clear line of coordination with government bodies related to national security and administration. However, such consistency can only be justified if accompanied by a clear separation between the President's control over general policy and the National Police's independence in law enforcement actions.²⁴ The President may set the direction for macro-level domestic security policy, institutional reform, and administrative accountability, but must not interfere in investigative processes, the exercise of legal discretion, or the handling of specific cases. Therefore, the ideal design for the independence of the National Police requires a normative clarification that the subordinate relationship to the President is of an administrative-institutional nature, not an operational subordination in the application of the law against specific citizens or political actors.

The consequence of this model is the need to clarify the boundaries between democratic accountability and government intervention. The National Police cannot be positioned as a fully autonomous institution without oversight, as it holds significant coercive powers that directly impact citizens' rights. However, democratic accountability must not be structured in a way that drags the police into the realm of political bargaining. In this context, ideal independence must be built through oversight mechanisms that are objective, legally grounded, and focused on performance evaluation as well as compliance with human rights. The National Police Commission (Kopolnas), judicial oversight, ethical mechanisms, and public oversight must be strengthened as checks and balances.²⁵ Thus, the independence of the National Police should not be interpreted as freedom from accountability, but rather as professional autonomy that remains bound by the law, ethics, and legitimate democratic oversight mechanisms.

In this framework, the mechanism for appointing and dismissing the National Police Chief is the most urgent issue requiring redesign. Article 11 of Law No. 2 of 2002 currently designates the President as the authority to appoint and dismiss the National Police Chief with the consent of the House of Representatives. Historically, this provision was intended as a form of checks and balances. However, from a presidential system perspective, the approval model actually creates tension because the position of National Police Chief is structurally part of the executive branch, yet its personal legitimacy must be negotiated with the House of Representatives.²⁶ Consequently, the National Police Chief risks being caught between two axes of political legitimacy: the President as the structural superior and the House of Representatives as the grantor of political approval. The ideal design moving forward is to maintain the DPR's involvement but shift its role from granting approval to providing constitutional, transparent,

²³ Nasrullah, N. (2023). Tinjauan Terhadap Independensi Komisi Polisi Nasional Dalam Perspektif Lembaga Negara Independen. *UNES Law Review*, 5(4), 3581-3592.

²⁴ Iswandi, K., & Prasetyoningsih, N. (2020). Kedudukan State Auxiliary Organ dalam Sistem Ketatanegaraan di Indonesia. *Jurnal Penegakan Hukum Dan Keadilan*, 1(2), 138-165.

²⁵ Warsyim, Y. (2023). Peran Komisi Kepolisian Nasional Dalam Penegakan Kode Etik Kepolisian Negara Republik Indonesia. *Fundamental: Jurnal Ilmiah Hukum*, 12(1), 130-152.

²⁶ Habiburohman, I. (2021). Hubungan Presiden dan Dewan Perwakilan Rakyat Pasca Amendemen Perspektif Teori Constitutional Retrogression. *Jurnal Hukum Ius Quia Iustum*, 28(1), 21-44.

and measurable input. In this way, the oversight function remains intact, but the lines of accountability within the presidential system become clearer. The shift from a consent model to a deliberative model has a strong theoretical basis. First, as the head of the executive branch, the President must bear full responsibility for the executive bodies under his authority; therefore, the final authority to appoint the National Police Chief should rest with the President. Second, the House of Representatives can still exercise its oversight function through a fitness-for-office review, a thorough examination of the candidate's track record, and the issuance of an official opinion that is open to the public. Third, the advisory model will reduce the risk of politicizing the position of National Police Chief, as the process no longer takes the form of an approval transaction that could create a political burden from the very start of the term. Fourth, this mechanism is more in line with the logic of a presidential system, which demands a clear chain of command within the government, while still maintaining democratic oversight by parliament. Thus, this redesign does not weaken the DPR's oversight; rather, it places it in a more appropriate and systemically consistent position.

The ideal framework for the independence of the National Police also requires a restructuring of the relationship between the police profession and civilian positions outside the police institution. In this regard, Constitutional Court Decision No. 114/PUU-XXIII/2025 holds significant importance. The Court ruled that the phrase in the explanatory notes to Article 28(3) of the National Police Law, which permits active-duty National Police members to hold positions outside the police force based on an assignment by the National Police Chief, is inconsistent with the 1945 Constitution and lacks legal binding force. The Court's ruling and reasoning reaffirm that active-duty police officers, in principle, may only hold positions outside the police institution after permanently resigning or retiring from police service.²⁷ The ruling emphasizes that police professionalism requires a clear boundary between police functions and civilian positions, to prevent the expansion of the National Police's institutional influence into the civilian bureaucratic and political spheres.

From an institutional design perspective, Constitutional Court Decision No. 114/PUU-XXIII/2025 should not be understood merely as a technical correction to the legislative explanation, but rather as a normative direction for consolidating the independence of the National Police. By closing the loophole regarding the assignment of active-duty National Police officers to civilian positions, the institutional boundary between the police and the civilian sphere becomes clearer. This is important because one of the sources of the independence problem arises precisely when active-duty police officers occupy strategic positions outside the institution and expand the police's network of influence within the state bureaucracy.²⁸ Moving forward, this final and non-appealable Constitutional Court decision should ideally be followed by a revision of the National Police Law to explicitly codify the prohibition within the body of the law itself, rather than relying solely on judicial interpretation. Thus, the guarantee of the National Police's independence will not merely be supported by court rulings but will be firmly embedded in a clear, definitive, and easily enforceable legal framework.²⁹

Ultimately, the ideal framework for the independence of the National Police within Indonesia's constitutional system rests on four interrelated elements. First, maintaining the National Police under the President as a choice consistent with the presidential system. Second, limiting that relationship to the administrative and general policy spheres, rather than intervention in specific law enforcement matters. Third, redesigning the mechanism for the appointment and dismissal of the National Police Chief from a scheme requiring DPR approval to one involving DPR consideration. Fourth, affirming a clear separation between active-duty National Police members and civilian positions, as emphasized by the Constitutional Court in Decision No. 114/PUU-XXIII/2025. If these four elements are consistently institutionalized, the National Police can remain within the framework of a presidential system without losing its functional independence as a law enforcement agency. At that point, the National Police will be more likely to function as an instrument of the state in the constitutional sense, rather than as an instrument of power in political practice.

CONCLUSION

According to Article 30(4) of the 1945 Constitution and Law No. 2 of 2002, the Indonesian National Police (Polri) is a state institution tasked with maintaining public security and order, enforcing the law, and protecting,

²⁷ Gunarudin, D. K., & Hamid, H. (2025). IMPLIKASI PUTUSAN MAHKAMAH KONSTITUSI NOMOR 114/PUU-XXIII/2025 TERHADAP KINERJA DAN PROFESIONALITAS LEMBAGA PENEGAK HUKUM DI LUAR LEMBAGA KEPOLISIAN REPUBLIK INDONESIA. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, 12(12), 4821-4827.

²⁸ Sobirin, L. A. (2026). Analysis of Police Regulation No. 10 of 2025 on the Placement of Police Officers Outside the Structure in the Perspective of the Code of Ethics. *Jurnal Media Hukum*, 14(1), 120-132.

²⁹ Nasir, L., Rijal, S., & Akbar, M. A. (2025). Kedudukan Putusan Mahkamah Konstitusi dalam Pembentukan Undang-Undang di Indonesia. *Jurnal USM Law Review*, 8(2), 622-638.

safeguarding, and serving the public; therefore, its focus should be on legal and public interests, not on the interests of those in power. However, the structural position of the National Police, which is directly under the President, creates institutional ambivalence because, on the one hand, it aligns with the logic of the presidential system, but on the other hand, it opens the door to political intervention that can affect the functional independence of the police. This problem is further complicated by the design of the appointment and dismissal of the National Police Chief, which requires the approval of the House of Representatives (DPR), as this mechanism has the potential to blur the lines of presidential accountability and drag the position of the National Police Chief into the political arena. Therefore, the ideal framework for the independence of the National Police within Indonesia's constitutional system is to maintain the National Police under the President with strict limitations on administrative and general policy matters, redesign the DPR's role from approval to consultation, and reaffirming the separation of active-duty police officers from civilian positions, as emphasized in Constitutional Court Decision No. 114/PUU-XXIII/2025, so that the National Police consistently function as an instrument of the state, not an instrument of power.

REFERENCES

Legislation

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2002 Nomor 2 dan Tambahan Lembaran Negara Nomor 4168)

Putusan Mahkamah Konstitusi Nomor 114/PUU-XXIII/2025 perihal Pengujian Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Journal

Abdul, H. L. O., & Anugerah, W. (2025). NETRALITAS KEPOLISIAN REPUBLIK INDONESIA PADA PEMILIHAN UMUM (PEMILU). *Jurnal Ilmu Hukum Kanturuna Wolio*, 166-176.

Ananda, A. I., & Natsir, M. Y. (2020). Peran Kepolisian Dalam Penanganan Unjuk Rasa (Uu No 2 Tahun 2002 Tentang Kepolisian Republik Indonesia). *Jurnal Syariah Hukum Islam*, 3(2), 92-100.

Anshar, R. U., & Setiyono, J. (2020). Tugas dan Fungsi Polisi sebagai penegak hukum dalam Perspektif Pancasila. *Jurnal Pembangunan Hukum Indonesia*, 2(3), 359-372.

Bastian, A., Akili, R. H., & Kadir, Y. (2024). Netralitas Kepolisian Republik Indonesia Pada Penyelenggaraan Pemilihan Umum. *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL*, 3(2), 96-104.

Darry, M., & Asri, D. (2022). Problematika netralitas Polri di era Jokowi: Keterlibatan dalam politik praktis dan bisnis. *Jurnal Politik Indonesia*, 8(1).

Fatimah, S., Arif, M. Z., Day, G. S. S., & Zayyanurroihan, M. (2025). POLITIK HUKUM TATA TERTIB DPR TENTANG PENCOPOTAN HAKIM MK, MA, KPK, DAN KAPOLRI: ANALISIS KEWENANGAN DAN IMPLIKASI TERHADAP INDEPENDENSI LEMBAGA NEGARA. *Wijaya Putra Law Review*, 4(2), 217-242.

Gunarudin, D. K., & Hamid, H. (2025). IMPLIKASI PUTUSAN MAHKAMAH KONSTITUSI NOMOR 114/PUU-XXIII/2025 TERHADAP KINERJA DAN PROFESIONALITAS LEMBAGA PENEGAK HUKUM DI LUAR LEMBAGA KEPOLISIAN REPUBLIK INDONESIA. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, 12(12), 4821-4827.

Habiburohman, I. (2021). Hubungan Presiden dan Dewan Perwakilan Rakyat Pasca Amendemen Perspektif Teori Constitutional Retrogression. *Jurnal Hukum Ius Quia Iustum*, 28(1), 21-44.

Iswandi, K., & Prasetyoningsih, N. (2020). Kedudukan State Auxiliary Organ dalam Sistem Ketatanegaraan di Indonesia. *Jurnal Penegakan Hukum Dan Keadilan*, 1(2), 138-165.

Khaliq, A. (2025). Tinjauan Kritis Kekuasaan Presiden Terhadap Polri Berdasarkan Teori Trias Politica. *Journal Justice*, 7(2), 83-98.

Kurniawan, H. F. (2025). EKSISTENSI KEPOLISIAN RI DI TENGAH DISRUPSI POLITIK DAN CITRA INSTITUSI. *Journal of Syntax Literate*, 10(6).

Lubis, R., Hadiyanto, A., & Bhakti, R. T. A. (2026). Strategi Polri dalam Penegakan Hukum Humanis untuk Meningkatkan Kepercayaan Publik di Kepulauan Riau. *JURNAL USM LAW REVIEW*, 9(2), 809-828.

Marasabessy, F. (2024). Pengaruh cawe-cawe presiden terhadap netralitas Polri di Pilpres tahun 2024. *Islamic Banking & Economic Law Studies (I-BEST)*, 3(1), 1-11.

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- Muklis, M., & Ahda, M. K. M. (2023). Persetujuan Dewan Perwakilan Rakyat Dalam Pengangkatan dan Pemberhentian Kepala Kepolisian Negara Republik Indonesia Dalam Sistem Presidensial di Indonesia. *Legalitas: Jurnal Hukum*, 14(2), 265-276.
- Nasir, L., Rijal, S., & Akbar, M. A. (2025). Kedudukan Putusan Mahkamah Konstitusi dalam Pembentukan Undang-Undang di Indonesia. *Jurnal USM Law Review*, 8(2), 622-638.
- Nasrullah, N. (2023). Tinjauan Terhadap Independensi Komisi Polisi Nasional Dalam Perspektif Lembaga Negara Independen. *UNES Law Review*, 5(4), 3581-3592.
- Nasser, M. (2021). Peran Komisi Kepolisian Nasional Dalam Pengawasan Fungsional Polri. *Jurnal Hukum Sasana*, 7(1), 96-116.
- Nikmat, M., Kosasih, A., & Masril, M. (2021). Analisis Yuridis Pengangkatan dan Pemberhentian Kepala Polisi Republik Indonesia Menurut Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia dan Siyasah Dusturiyah. *Al Ijarah: Jurnal Pemerintahan dan Politik Islam*, 6(2), 218-236.
- Purba, A. M., Suseno, J. J. B., Tamba, D. G., Butar, M. B., & Sinambela, J. (2024). Optimalisasi Peran Polisi dalam Penegakan Hukum Berbasis Humanis dan Profesionalisme. *Jurnal Hukum Lex Generalis*, 5(12), 1-16.
- Ramdhany, D. M., Budiono, B., Junaedi, D., Ariyanti, J. M., Wiradirja, I. R., & Haspada, D. (2025). Dinamika Politik dan Hukum dalam Mempengaruhi Penegakan Hukum di Indonesia. *Themis: Jurnal Ilmu Hukum*, 3(1), 47-56.
- Rifandanu, F. (2024). Urgensi Penataan Kembali Lembaga-Lembaga Negara Independen Dalam Mewujudkan Sistem Pemerintahan Yang Demokratis Dan Konstitusional. *Datin Law Jurnal*, 5(1), 10-27.
- Rijal, S., & Ananda, A. I. (2025). Analisis Yuridis Pengalihan Status Kepemilikan dan Pengelolaan Pelabuhan dari Pemerintah Pusat ke Pemerintah Provinsi (Studi Kasus Pada Pelabuhan Dawi-Dawi Kabupaten Kolaka). *JOSH: Journal of Sharia*, 4(01), 53-68.
- Sari, A. V., & Nusa, D. R. F. (2025). Crisis of Public Trust in Law Enforcement Agencies: TNI, Polri, and Fire Department under the Scrutiny of Law and Political Power. *Perkara: Jurnal Ilmu Hukum dan Politik*, 3(2), 964-977.
- Sobirin, L. A. (2026). Analysis of Police Regulation No. 10 of 2025 on the Placement of Police Officers Outside the Structure in the Perspective of the Code of Ethics. *Jurnal Media Hukum*, 14(1), 120-132.
- Suryana, N., Habibullah, A. Z., & Alifya, T. W. (2025). HAK ASASI MANUSIA DI BALIK LENCANA: POTRET 20 TAHUN LEBIH REFORMASI KEPOLISIAN. *Aliansi: Jurnal Politik, Keamanan Dan Hubungan Internasional*, 4(2), 114-121.
- Tamrin, H. (2023). Menyoal kedudukan Polri dalam sistem ketatanegaraan Indonesia sebagai negara demokrasi. *Jurnal Legalitas*, 1(1), 87-94.
- Ulfah, R. T., Hanafi, M. S. M., Febryan, Z. B., & Putri, A. S. (2026). implementasi etika profesi kepolisian dalam penegakan hukum dan pelayanan masyarakat polda jawa barat. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 4(02), 1-27.
- Warsyim, Y. (2023). Peran Komisi Kepolisian Nasional Dalam Penegakan Kode Etik Kepolisian Negara Republik Indonesia. *Fundamental: Jurnal Ilmiah Hukum*, 12(1), 130-152.
- Yogeta, Y., & Akhmaddhian, S. (2025). Analisis Kritis terhadap Putusan Mahkamah Konstitusi atas Pengujian Materiil Undang-Undang tentang Kepolisian. *Logika: Jurnal Penelitian Universitas Kuningan*, 16(02), 207-216.