



## MEASURING THE CONSISTENCY OF PANCASILA RULE OF LAW IMPLEMENTATION IN ENSURING JUDICIAL INDEPENDENCE IN INDONESIA

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### ABSTRACT

This study examines the consistency of the implementation of the Pancasila State of Law in guaranteeing judicial freedom in Indonesia, as stipulated in Article 1 paragraph (3) and Article 24 paragraph (1) of the 1945 Constitution. The Pancasila State of Law integrates the rule of law, protection of human rights, the principles of legality, and judicial independence with Pancasila values that are philosophical, ethical, and religious. Judicial independence, as a key pillar, requires judges to be free from external intervention to produce fair and objective decisions. However, its implementation faces challenges, such as a history of executive intervention, the quality of human resources, and corrupt practices, collusion, and nepotism. This study uses a juridical normative method, analyzes laws and regulations, legal doctrine, and judicial practices in Indonesia, and compares them with the Dutch and United States judicial systems. The results show the need for legal reconstruction through strengthening the guarantee of the position of judge, transparent recruitment, separation of powers, independent budget management, and improving the appeal and cassation mechanisms. This reform will ensure an independent, professional, and integrity judiciary, in line with the values of Pancasila.

## 1. Introduction

Indonesia expressly declares itself to be a state of law in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), which reads: "The State of Indonesia is a state of law." This provision indicates that in the life of the state, the law must be the main foundation in exercising state power,

resolving disputes, and limiting state authority.<sup>1</sup> In this context, all state actions or policies must have a clear legal basis and legality that can be accounted for, whether based on written or unwritten laws.

The concept of the state of law not only places the law as the commander-in-chief, but also contains fundamental principles that bind all elements of the state. One of the important characteristics of the rule of law is the recognition and protection of human rights. The 1945 Constitution specifically regulates it in Chapter XA, starting from Article 28A to Article 28J. In Article 28J paragraph (2) it is emphasized that: "In exercising his rights and freedoms, everyone is obliged to submit to the restrictions established by law... to meet just demands in accordance with moral considerations, religious values, security, and public order in a democratic society." This norm shows that human rights in Indonesia are not absolute, but are subject to legal restrictions to ensure a balance between individual rights and the public interest.

In addition, the principle of independent and impartial judicial power is also the foundation of the state of law. This is affirmed in Article 24 paragraph (1) of the 1945 Constitution which states: "The power of the judiciary is an independent power to administer the judiciary to uphold law and justice." The independence of judicial power is intended so that the judiciary is free from the intervention of other powers, so that judges' decisions are truly based on the rule of law and the conscience of justice.<sup>2</sup>

Another feature is the principle of legality, which guarantees legal certainty for every citizen. In Article 28D paragraph (1) of the 1945 Constitution it is affirmed: "Everyone has the right to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law." This principle is also affirmed in the national criminal law through Article 1 paragraph (1) of the Criminal Code (KUHP): "No act can be punished except on the strength of the criminal rules in the laws that have existed before." The principle of *nullum delictum nulla poena sine praevia lege poenali* means that a person can only be criminally charged if his actions have been regulated in a previous criminal law.

The concept of a state of law in Indonesia is known as the State of Pancasila Law. According to Hadjon<sup>3</sup> there are three models of the state of law, namely *rechtsstaat*, the rule of law, and the Pancasila State of Law. The Pancasila State of Law not only upholds the law as a written norm, but also makes Pancasila the source of all sources of law. This reflects that the law in Indonesia is not solely positivistic, but also philosophical, ethical, and religious in accordance with the values contained in Pancasila as the basis of the state and the nation's view of life.

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<sup>1</sup> Ogiandhafiz Juanda., The Ideal Law State Concept in Indonesia: The Reality and The Solution, *Journal of Law, Politic and Humanities*, Vol.3, no.2, 2023, page.255.

<sup>2</sup> Joko Sasmito., Judicial Independence in the Enforcement of Military Crimes in the Indonesian Justice System, *Lex Publica*, Vol.5, no.1, 2018, page.16.

<sup>3</sup> Philipus M. Hadjon., *Hukum Administrasi dan Tindak Pidana Korupsi*, Yogyakarta, Gadjah Mada University Press, 2011, page.17.

One of the characteristics of the state of Pancasila law is the guarantee of freedom of religion in a positive sense, namely the freedom to embrace religion and carry out worship according to their respective beliefs.<sup>4</sup> However, in the context of the state of law Pancasila, atheism has no place, and communism is prohibited because it is contrary to the principle of the One Godhead. M. Tahir Azhari<sup>5</sup> formulated the characteristics of the Pancasila legal state, including the existence of a close relationship between religion and the state, resting on God, positive religious freedom, prohibition of atheism and communism, the principle of kinship and harmony, the constitutional system, equality before the law, and a free judiciary.

Thus, the Indonesian legal state has unique characteristics and is different from the *rechtsstaat* model of Continental Europe and the rule of law of the Anglo-Saxon tradition. The Dutch influence did indeed shape the Indonesian legal system, but the form of the Indonesian legal state was not a complete copy of the western model, but a system rooted in the values of Pancasila.<sup>6</sup> Hadjon<sup>7</sup> emphasized that the characteristics of the Pancasila legal state include harmony between the government and the people based on the principle of harmony, proportional state power relations, and dispute resolution through deliberation as the main step before justice.

The affirmation of the concept of a state of law that is typical of Indonesia is further strengthened by the elimination of the term *rechtsstaat* in the amended 1945 Constitution. Article 1 paragraph (3) only states that Indonesia is a state of law, without the need to refer to foreign terms, because it has been believed that the Indonesian legal state model stands on the principles of Pancasila which are original and contextual with the nation's culture. This can also be seen in the recognition of the general principles of good governance as stated in the Explanation of Article 4 paragraph (1) of Law Number 37 of 2008 concerning the Ombudsman. The recognition of these principles shows that law is not only understood as a written regulation but also encompasses the unwritten norms that grow in society, reflecting a vibrant and dynamic legal system.

One of the important aspects of the state of law is the existence of a free, independent, and impartial judicial power.<sup>8</sup> Experts such as Wahjono,<sup>9</sup> and the International Commission of Jurists, emphasized that judicial freedom is an absolute requirement in the state of law. The affirmation of Indonesia as a state of law in Article 1 paragraph (3) of the 1945 Constitution marks a constitutional

<sup>4</sup> Nicola Colbran., Realities and Challenges in Realising Freedom of Religion or Belief in Indonesia, *The International Journal of Human Rights*, Vol.14, no.5, 2010, page.680.

<sup>5</sup> Doni Azhari., A Comparison of the Concept of the Rule of Law in Indonesia and Islamic Law, *Journal of Transcendental Law*, Vol.5, no.1, 2023, page.30.

<sup>6</sup> Putri Purnamasari., Dynamics of the History of Indonesian Legal System in Legal Transformation in Various Periods, *Innovative: Journal of Social Science Research*, Vol.4, no.6, 2024, page. 2555.

<sup>7</sup> Philipus M. Hadjon., *Hukum Administrasi dan Tindak Pidana Korupsi*, Yogyakarta, Gadjah Mada University Press, 2011, page.56.

<sup>8</sup> Yustina Trihoni Nalesti Dewi, W. Riawan Tjandra, and Grant R. Niemann., Independence of Judicial Power as a Foundation of Human Rights Judicial Function in Indonesia, *International Journal of Social Science and Humanity*, Vol.6, no.3, 2016, page.240.

<sup>9</sup> Padmo Wahjono., *Indonesia Negara Berdasarkan Atas Hukum*, Jakarta, Ghalia Indonesia, 1986, page.42.

commitment to the rule of law, protection of human rights, the principle of legality, and independent judicial power. However, the concept of the Indonesian state of law is not completely identical to the *rechtsstaat* or the rule of law, because it has the peculiarity of being a state of Pancasila law based on the values of Godliness, ethics, and family. In this context, the formulation of the problem raised in this study is how the conceptual and implementive characteristics of the Pancasila legal state, as well as how these principles are implemented consistently in the Indonesian legal system and judicial institutions. Therefore, the main research question asked is: How is the formulation and implementation of the concept of the Pancasila legal state in Indonesian constitutional practice, especially in guaranteeing judicial freedom?.

## **2. Research Methods**

The appropriate research method used in the study of judicial independence in Indonesia is the normative juridical research method. This method focuses on an in-depth study of laws and regulations, legal doctrines, and legal theories relevant to the topic of judicial independence. The juridical normative approach allows researchers to conduct a critical analysis of applicable legal regulations and practices, while providing space to formulate recommendations for legal or policy changes needed to strengthen judicial independence and independence.

In the context of the Indonesian judicial system consisting of the general court, religious court, state administrative court, and military court, juridical normative research is very appropriate because it can explore the formal and material legal aspects that govern the implementation of the court. This research also utilizes primary legal sources such as Law Number 48 of 2009 concerning Judicial Power. In addition, secondary legal sources in the form of legal literature, journals, and court decisions were also systematically analyzed. This method uses a statutory (legislative) approach to examine existing legal rules, a conceptual approach to understand legal principles related to judicial independence, and a comparative approach to compare the practice and regulation of judicial independence in Indonesia with the judicial system in other countries. Thus, the juridical normative method provides a comprehensive analytical framework to understand and reconstruct the law in order to improve the quality and independence of the judiciary in Indonesia.

## **3. Results and Discussion**

### **3.1. The Concept of Independent Judicial Power**

The concept of independent judicial power is a fundamental principle in the modern constitutional system that is rooted in Montesquieu's idea of *trias politica*, which separates executive, legislative, and judicial powers.<sup>10</sup> This separation is intended to prevent the dominance of one branch of power over another,

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<sup>10</sup> Annisa Zahra, Christian Alam Tegar Charisma, Muhammad Afir Ridho Azaby, and Siti Nurul Fadilah., *Teori Pemisahan Kekuasaan Trias Politica Dalam Pemikiran Filsafat Hukum Montesquieu, Praxis: Jurnal Filsafat Terapan*, Vol.1, no.01, 2022, page.10.

especially in keeping judges free from intervention. This principle is adopted globally and is reflected in The Bangalore Principles of Judicial Conduct which stipulates that judicial independence is a prerequisite for the upholding of the rule of law and a fundamental guarantee for a fair judiciary. This principle emphasizes that judges must carry out their functions freely from external influences of any kind, either direct or indirect, including from the executive and the legislature. A judge is also required to maintain and strengthen the independence of judicial institutions and maintain public trust.

In the Indonesian context, the independence of the judiciary has been constitutionally recognized in Article 24 paragraph (1) of the 1945 Constitution which states that judicial power is an independent power to administer the judiciary to uphold law and justice. Nevertheless, in practice, this concept has undergone a long development. In the early days of independence, through Law Number 7 of 1947, the judicial power was still under executive control. The new order regime tried to correct this by issuing Law Number 14 of 1970, which affirmed that the judiciary is independent, but at the implementation level it has not been completely independent of executive control because the coaching, financial, and judicial status systems are still under the auspices of the government structure.

Significant changes occurred after the 1998 reforms, when the independence of the judiciary was strengthened through constitutional changes and the birth of several new laws that reflected the spirit of legal reform. The Supreme Court gains full authority over the organization and financial management of judicial institutions, while judicial training is carried out in conjunction with the Judicial Commission.<sup>11</sup> Furthermore, Law Number 5 of 2014 concerning the State Civil Apparatus emphasizes in Article 122 that judges are state officials, except for ad hoc judges. However, the exception to ad hoc judges has drawn criticism because in reality they continue to perform judicial functions on behalf of the state.

The independence of judicial power in Indonesia can be studied through three main aspects, namely the independence of the position of judges, independence in the judicial process, and institutional independence.<sup>12</sup> The independence of the position concerns the position of the judge as the main executor of judicial functions.<sup>13</sup> As defined in the Great Dictionary of the Indonesian Language, independence is the ability to act freely without dependence on others. Judges, as guardians of justice, must have high moral and professional integrity so as not to be influenced by external pressures in carrying out their duties.

Article 24 paragraph (1) of the 1945 Constitution is the main basis for the existence and function of independent judges. This freedom is not only formal but also substantive, i.e. judges must be free to examine and decide cases based on law

<sup>11</sup> Widayati Widayati, Winanto Winanto, Denny Suwondo, Arpangi Arpangi, and Yudhi Taufiq Nur Hidayat, Reconstruction of the Judicial Commission's Authority in Promoting Judges with Integrity, *Jurnal Hukum* Vol.39, no.2, 2023, page.272.

<sup>12</sup> Adies Kadir, Gunarto Gunarto, Suwarno Suwarno, and Md Adnan Kabir, Judicial Power and Judges' Status in Indonesia's Constitutional Framework, *Jurnal Hukum* Vol.41, no.1, 2025, page.200.

<sup>13</sup> G. Nurmansyah, I. Bagus Wiranata, A. I. Fardiansyah, and S. V. Mladenov., Preventing AI-based Phishing Crimes Across National Borders Through the Reconstruction of Personal Data Protection Laws, *Jurnal Hukum Novelty*, Vol.15, no.2, 2024, page.150.

and conscience. This view is supported by legal experts such as Mertokusumo<sup>14</sup> who stated that the independence of judges is one with the freedom of judges in carrying out their profession. The judge must not be bound or partisan in order to issue an objective and fair verdict.

Therefore, the realization of the Pancasila legal state that upholds justice and human rights is highly dependent on the quality and independence of the judiciary. This independence must be maintained not only through constitutional and statutory norms such as Law Number 48 of 2009 concerning Judicial Power, but also through the institutional commitment of the Supreme Court, the Judicial Commission, and the integrity of judges. Thus, fair and impartial law enforcement can be realized in the Indonesian legal system in accordance with the mandate of the constitution and the values of Pancasila.

The independence of judges is not only the ideal of every nation, but also a universal principle that must be upheld in any judicial system.<sup>15</sup> This principle is the embodiment of the ideal of humanity that desires justice that is not influenced by external forces. However, such freedom is not absolute; it is limited by macro factors such as the political, governmental, and economic systems, as well as micro factors such as Pancasila, the Constitution, laws and regulations, public order, morality, and the interests of the parties.

The essence of the independence of judges is not the unlimited freedom to act arbitrarily, but the freedom to carry out judicial duties while remaining subject to legal principles, social norms, and principles of clean governance, free from corruption, collusion, and nepotism, as stipulated in Law Number 28 of 1999 concerning the implementation of a clean and free state from corruption. This independence must be manifested in the professional attitude and integrity of judges in avoiding all forms of intervention, both internal and external. Internal harassment can stem from low quality human resources, inadequate training, or lack of well-being that leaves judges vulnerable to bribery and pressure.<sup>16</sup>

Psychologically and mentally, independence reflects a person's ability to make decisions independently based on careful consideration, without dependence on others.<sup>17</sup> This is a manifestation of autonomy, self-confidence, and an intrinsic drive to act in accordance with personal values and responsibilities.

In the judicial context, the independence of judges means the ability to make decisions autonomously, based on law and conscience, without political, social, or pressure from the parties to the case. This is in line with Article 8 of The Universal

<sup>14</sup> Sudikno Mertokusumo, Sistem Peradilan di Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol.6, no.9, 1997, page.3.

<sup>15</sup> Sudikno Mertokusumo, Sistem Peradilan di Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol.6, no.9, 1997, page.7.

<sup>16</sup> Margaret H. Vickers., Towards Reducing the Harm: Workplace Bullying as Workplace Corruption—A Critical Review, *Employee Responsibilities and Rights Journal*, Vol.26, 2014, page.95-113.

<sup>17</sup> Camillia Kong., *Mental Capacity in Relationship: Decision-Making, Dialogue, and Autonomy*, Cambridge, Cambridge University Press, 2017, page.17.

Declaration of Human Rights (1948) which states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

Independent judges will uphold the principle of impartiality and be fair to all parties regardless of social status, ethnicity, religion, or other background. He is also obliged to be objective even though he is under psychological pressure and threats from outside. This independence is the main pillar in the enforcement of the law with fair and integrity.

Furthermore, The International Bar Association Code of Minimum Standards of Judicial Independence (1987) affirms that the independence of judges includes personal and substantive aspects. Internal independence requires that the appointment, transfer, dismissal, and salary of judges must be independent of the intervention of executive power.

Thus, the independence of judges is a fundamental prerequisite for the sustainability of a fair and democratic judiciary. Independent judges not only rely on textual legal rules, but also conduct legal reasoning, legal interpretation, and legal argumentation based on mastery of legal science both philosophically, theoretically, and dogmatically.

Independence in judicial power requires a judge to render a verdict based on personal reasoning and argumentation, not on the basis of the judgment of another party. Personal independence asserts that judges must be able to make decisions without interference from colleagues or superiors, while collective independence asserts that the judiciary must be free from the influence of external power.

In this context, Ruhijat et al.<sup>18</sup> stated that the independence of judges is limited to the exercise of judicial functions. In line with that, Mahmodin<sup>19</sup> emphasized that judicial power is the authority to examine, adjudicate, and decide cases for the sake of upholding law and justice based on laws and regulations. Thus, the judge's freedom to decide cases must be based on the prevailing positive legal norms, but remain open to conscience considerations—as long as it is done within the framework of upholding substantive justice.

Judges should ideally have empathy for the suffering of victims who are harmed by the abuse of power, both by political rulers and owners of economic power. Therefore, judges are required to be sensitive to the sense of justice of the community, especially when dealing with groups that have a dominant position. This sensitivity is the basis for judges in making fair decisions, because in the end only the judge is the last representative in maintaining justice for the weak party. Normatively, the independence of judges in Indonesia has been guaranteed

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<sup>18</sup> Tubagus Rismunandar Ruhijat, Hamka Kapopang Roejito, Festy Rahma Hidayati Imran, and Rr Diana Candra Hapsari Agus Susanto., *Bunga Rampai: Memperkuat Peradaban Hukum dan Ketatanegaraan Indonesia, disunting oleh Imran*, Jakarta, Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2019, page.61.

<sup>19</sup> Mahfud Mahmodin., *Konstitusionalisme dan Pelembagaannya dalam Ketatanegaraan di Indonesia*. Makalah disampaikan dalam Pelatihan Hakim dan Jaksa yang diselenggarakan dalam bentuk kerja sama antara Komisi Yudisial Republik Indonesia, PUSHAM UII dan NCHR Oslo University, Jakarta, 2015.

through the constitution and laws and regulations, especially Article 3 of Law Number 48 of 2009 concerning Judicial Power, which affirms that judges and constitutional judges are obliged to maintain the independence of the judiciary in carrying out their duties and functions. All forms of interference from outside parties in judicial affairs are prohibited, except as stipulated in the 1945 Constitution of the Republic of Indonesia. Violations of this provision may be subject to criminal sanctions in accordance with laws and regulations.

The judicial power exercised by the Supreme Court and the judiciary under it aims to uphold law and justice through examination, trial, and termination of cases. Therefore, synergy between the lower level judiciary and the Supreme Court is needed to produce objective decisions and uphold the value of justice. The judiciary must be kept away from all forms of influence of other powers, including the executive.

Judge independence can be viewed from two perspectives, namely personal independence which refers to the judge's freedom from the influence of fellow judges or the internal environment, and substantive independence, which is the judge's freedom from external influences when deciding cases or carrying out their judicial duties.

Individual independence places judges at the center of all forms of judicial autonomy. In this position, judges are required to be free from all forms of pressure, both social, political, and economic, and are obliged to uphold the principle of impartial justice, as a moral representation of law enforcement.

However, the independence of judges is inseparable from the influence of internal and external factors. Harahap<sup>20</sup> divides these factors into two categories. Subjective factors include a priori attitude when the judge from the outset presumes the defendant guilty; emotional attitudes that make decisions are influenced by the judge's temperament such as irritability or vindictiveness; arrogance of power that makes judges feel superior; and personal morals which are the main basis in examining and deciding cases.

Meanwhile, objective factors include cultural, educational, and religious backgrounds that can affect the judge's perspective on a case, as well as professionalism which includes skills, knowledge, and integrity in carrying out duties.

Jubair et al.<sup>21</sup> added that the factors that affect the judge's decision can be divided into three types of input. Raw input is related to ethnic, religious, and informal education backgrounds; instrumental inputs related to formal education and work experience; and environmental inputs that include the influence of the socio-cultural environment, including the organization where the judge is sheltered.

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<sup>20</sup> M. Yahya Harahap., *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Jakarta, Sinar Grafika, 2025, page.15.

<sup>21</sup> Tampubolon Jubair, M. Hatta Roma, Lukman Hakim, and Agus Sudaryanto., Prevention Religion Offenses (Delic) in Policy Formulation for National Criminal Justice Reform, *Journal of Law, Policy and Globalization*, Vol.24, 2014, page.82.



In addition to the factors mentioned earlier, according to Ferejohn<sup>22</sup>, the independence of judges is also influenced by individual dynamics, group dynamics in the organization, dynamics of the organizational environment, external pressures, old habits, personal traits, outside group influences, and past habits. Furthermore, a person's decision is influenced by the values that live in the community in the surrounding environment. These values include political values, namely decisions made based on the political interests of certain parties or groups; organizational values, where decisions are based on values that the organization embraces such as reciprocity and sanctions that influence members to accept and implement them; personal values, i.e. decisions based on the personal values of the decision-maker to maintain the status quo, reputation, wealth, etc.; the value of discretion, where decisions are based on policymakers' perceptions of the public interest; as well as ideological values, such as nationalism which is the basis for policymaking. In addition, prosecutor recognizance also influences judges in imposing sentences, where the higher the prosecutor's demands, the higher the sentence imposed.

The independence of judges is very vulnerable to being influenced by various factors, both internal to the judge himself, the influence of the institution under which the judge is sheltered, and cultural, social, political, and so on. Therefore, if there is a decision that is unsatisfactory for the justice seeker, it is not solely caused by the intention of the judge, but can also be caused by external factors. In this regard, the position of judges is very important as a referee in the world. Judges are considered to be the embodiment of the will of the lawmakers through their decisions, even though each decision must reflect the value of justice, legal certainty, and the usefulness of the law for society. However, the main essence of the judge's decision is justice. A fair verdict will provide benefits to the community even though sometimes it has to sacrifice the value of legal certainty which is also a legal goal. Judges who have a noble conscience and uphold the principles of justice with professionalism determine the image of judges in the state of law.

To be able to give a verdict according to the expectations of the community, judges are required to maintain neutrality in decisions that are fair, legal, and useful. Therefore, judges must be given freedom in carrying out their profession so that the verdict truly serves the interests of the litigants objectively and transparently, by upholding the value of justice that develops in society. Neutrality does not only come from outside, through the norms that underlie the duties and functions of judges, but must also come from within the judge himself. Judges must be able to neutralize themselves from various factors that can affect their decisions.

Independence in the judicial process starts from the examination of the case, proof, until the verdict is read by the judge. The parameters of independence in the judicial process are free from outside the intervention of outside the judicial power that seeks to influence the judicial process either directly or indirectly. The judicial process can be considered independent if the examination of the case is carried out based on the applicable legal rules without any rules covered up or fabricated by the court. On the other hand, if the interference does not affect the judicial process, then the judiciary can be said to be independent.

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<sup>22</sup> John Ferejohn., Independent judges, dependent judiciary: explaining judicial independence, *S. Cal. L. Rev.*, Vol.72, 1998, page.353.

Independent judicial power is a power that is free from physical and psychological pressure, such as social pressure in the form of mass demonstrations that are often seen in trials. Physical pressure can be in the form of the presence of supporters of both parties in court cases, as happened in the chaos of the Pilkada dispute trial at the Constitutional Court. This incident not only set a bad precedent for law enforcement in Indonesia, but also greatly affected the freedom of judges in deciding cases. A similar thing can be seen in blasphemy cases, although factually the effect on the independence of judges has not been proven, certain groups can indirectly affect the independence of judges.

In addition, judges often experience psychological pressure in the form of threats from the parties to the case, and even the safety of life is sometimes at stake for the verdict they take. In this regard, Mertokusumo<sup>23</sup> stated that the independence of judges is the freedom of judges who do not depend on anyone and are free from the influence of any party. Judges or the judiciary as a place to seek justice must be independent and independent, so that they are impartial so that the verdict is objective. The independence of judges cannot be separated from the freedom of judges, which means that they are free to examine and decide cases according to their beliefs and free from the influence of extra-judicial parties.

Furthermore, the independence and freedom of judges is not only the ideal of every nation, but a universal principle that applies anywhere and at any time in the judicial system, because the principle is the embodiment of human ideals. It is through the hammer of the judge that justice can be achieved. However, the independence of the judge does not mean absolute freedom to win a particular party, but rather freedom within the corridors of the state of law that is limited by law, including unwritten law.

Institutional independence of judges is often called judicial independence. According to Muhammad<sup>24</sup> the independence of judicial power in Indonesia means the freedom of judges to carry out the duties of conducting justice impartially, based on facts and law, without restrictions, influence, pressure, or intervention from any party, for the sake of justice based on Pancasila. Institutional independence is related to the institution where the judge belongs.

The parameters of institutional independence include whether the judiciary has dependency or influence from other institutions such as the prosecutor's office, the police, and related institutions, as well as whether there are formal hierarchical relationships that allow the institution of its superiors to intervene and affect the independence or independence of the judiciary.

Institutional independence means that the judiciary must be independent vertically or horizontally. Free from vertical intervention means that the judiciary is free from interference from institutions on it, such as from the High Court to the District

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<sup>23</sup> Sudikno Mertokusumo, Sistem Peradilan di Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol.6, no.9, 1997, page.6.

<sup>24</sup> Rusli Muhammad., Eksistensi Hakim dalam Pemikiran Yuridis dan Keadilan, *Jurnal Hukum Ius Quia Iustum*, Vol.21, no.3, 2014, page.430.

Court or from the Supreme Court to the High Court. Free from horizontal intervention means that the judiciary is free from the interference of other institutions such as the prosecutor's office, police, and other institutions that can intervene in the independence of the judiciary in carrying out its duties as an independent institution.

### **3.2. Independent Judicial Arrangements in Continental and Anglo-Saxon Countries**

The state of law is a doctrine in law that began to emerge in the 19th century in Europe along with the emergence of constitutional and democratic states. The term state of law is a translation of the Rule of Law or *Rechtsstaat*. In simple terms, a state of law means a state whose administration of government power is based on law. In a state of law, all actions of the government and state institutions must be based on the law and can be legally accountable.<sup>25</sup>

According to Friedman<sup>26</sup>, the state of law can be understood in two senses: formal and essential (material). In a formal sense, the state of law only means organized public power, so that all states, including authoritarian states, can be said to be a state of law. But in the true sense, the state of law involves standards regarding good and bad law, which are closely related to justice. The size of good and bad laws is difficult to determine because they vary depending on the society that gave birth to the concept.

The concept of the state of law is related to the idea of *Rechtsstaat* and the Rule of Law, but the two have differences, especially in terms of the judicial system. The *rechtsstaat* that developed in continental Europe had ordinary courts and special courts such as the State Administrative Court. The Rule of Law system that developed in Anglo-Saxon countries such as England, meanwhile, only had a common court without such a special court. Thus, the *Rechtsstaat* separates the general and special judicial bodies, while the Rule of Law does not.

Rahardjo<sup>27</sup> revealed that the concept of the Rule of Law in the UK is not the same as the implementation of the rule of law in Indonesia as stipulated in the 1945 Constitution paragraph (3) Article 1. Although the UK does not have a separate administrative judiciary, there is a dedicated forum for the settlement of state administrative disputes. In addition, some countries established the Constitutional Court as a special judicial institution to test laws and regulations and government actions against the constitution, such as in Germany, Italy, Austria, and Switzerland.

Other differences regarding the form of the state: the federal state and the unitary state. In a federal country like the United States, there are two systems of judicial power: at the federal level and at the state level, so there are many independent judicial institutions. In Germany, although also a federal state, the state and

<sup>25</sup> Wigati Pujiningrum, Rosa Agustina, and Harsanto Nursadi. "Civil Disputes Between Government and Individuals: A Comparative Study of Indonesia and French Legal System." *Jurnal Hukum* 40, no. 2 (2024): 110-133.

<sup>26</sup> Barry Friedman., Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts, *Columbia Law Review*, Vol.104, no.5, 2004, page.1215.

<sup>27</sup> Satjipto Rahardjo., *Hukum dan Perilaku: Hidup Baik Adalah Dasar Hukum yang Baik*, Jakarta, Penerbit Buku Kompas, 2009, page.70.

federal courts are organized in a single judicial system, with the Supreme Court and the Constitutional Court as the highest judicial institutions. In contrast, a unitary state like Indonesia has a single centralized judicial system, with the Supreme Court and the Constitutional Court as the highest judicial institutions located in the country's capital.

The third difference is the authority to test laws and regulations and government actions. In the United States, all levels of the judiciary have the authority to test laws and government actions. In Indonesia, the legal test of the 1945 Constitution is in the Constitutional Court, while the test of regulations under the law is in the Supreme Court. The testing of administrative government actions is at the State Administrative Court.

Some countries have special courts to test laws and regulations, which are related to the form of their judicial power systems. In Germany, the Constitutional Court (Bundesverfassungsgericht) has the authority to interpret the constitution, test the conformity of federal and state regulations with the Constitution, and settle disputes between the federal and state governments. In short, the state of law demands the exercise of state power based on accountable law, with judicial systems that can differ depending on the legal tradition, the form of the state, and the constitutional policies of each country.

The Netherlands adheres to the Continental European legal system, which is also embraced by Indonesia, which makes written law the main source. As an Indonesian colonizer for three centuries, the Netherlands applied its laws and judicial system in the Dutch East Indies, so the arrangement of judges in the Netherlands is interesting to study. The Dutch Supreme Court has 30 supreme court justices, in contrast to Indonesia, which has 60 supreme court justices. The recruitment of supreme court justices in the Netherlands is carried out through appointment by the Supreme Court itself according to the rules in Supreme Court Section 72.

The judiciary in the Netherlands focuses on judicial functions, adjudicating cases at the first level, appeals, and cassation. This is in accordance with the provisions of the Constitution of the Kingdom of the Netherlands which states that the settlement of civil rights disputes and criminal cases is the responsibility of the judiciary, while other types of cases can be regulated by law.

The Dutch judiciary was regulated in the Judicial Organizations Act of 1827 and was heavily reformed in 2002. There are currently around 2,200 judges in the Netherlands, with about 50% of them being women. The judicial system consists of five types of courts: sub-district, civil, criminal, state administration, and appeal. The courts are under government oversight through the Minister of Justice, who is responsible for the budget and support staff of the courts, and plays a role in the appointment of judges with recommendations to parliament. Control over the authority of the Minister of Justice is carried out by Parliament to maintain the independence of the judiciary.

The Chief Justice and Deputy Chief Justice of the Supreme Court are appointed by

the King/Queen on the proposal of Parliament and the consideration of the Supreme Court. The Supreme Court (Hoge Raad) oversees 19 courts of first instance and 7 courts of appeal. Criminal courts operate in three levels: district courts, appellate courts, and Supreme Courts, which function to test the validity of lower court decisions, not the facts of the case.

Recruitment of judges is autonomous and individual. Prospective judges can apply through the district court or the national selection committee. The judge's career is flexible, allowing for moving between different courts or levels based on personal submissions. In addition, out-of-court legal professionals with a minimum of six years of experience can be recruited through a rigorous selection process and one year of training as a deputy judge before being fully appointed.

Judge coaching is carried out through six years of training that includes theory and practice, with programs by the judge's academy and work experience in courts, prosecution services, and external legal institutions. After the training, prospective judges are appointed by the Minister of Justice. Promotion based on experience and managerial ability. This system guarantees the quality and professionalism of judges in the Netherlands.

Prior to the amendment to the Judicial Organization Act in 2002, the supervision of judges in the Netherlands faced many problems, such as poor housing conditions and separate staff structures. The organization of the court is very rigid, with a clear separation between judges and legal staff as well as directors and support staff, so communication between judges and staff is ineffective. As a result, judges and support staff are not aware of each other's activities, and the workspace in the court is very limited.

Judges in the Netherlands are appointed for life until the retirement age of 70, as provided for in the Civil Courts Act of 1957 and its amendments in 1972. This lifetime term of office is intended to maintain the independence of judges. Public prosecutors do not have permanent terms and can be dismissed if they do not function properly, while judges are free from dismissal by the Minister of Security and Justice.

The most important guarantee of judicial independence is contained in Article 117 of the Dutch Constitution, which states that judges are appointed for life and can only be dismissed by the courts under the law. This independence is maintained at all levels of the judiciary, although the Dutch system does not recognize an absolute separation of powers, so the judiciary remains dependent on the power of other countries to a certain extent.

Furthermore, the United States is a federal country with an Anglo-Saxon legal system, where jurisprudence is the main source of law, in contrast to the Continental European legal system such as in Indonesia. The U.S. implements a strict division of power between the executive, legislature, and judiciary, so that the three institutions do not interfere with each other, in contrast to the concept of checks and balances in Indonesia which allows interagency intervention.

Judicial power is set forth in Article III of the U.S. Constitution, which gives Congress the authority to establish the Supreme Court and lower federal courts. Federal courts have exclusive power over certain cases, such as violations of

federal law, interstate disputes, and cases involving foreign governments. State courts have broader jurisdiction and sometimes share power with federal courts.

The U.S. Supreme Court is the highest and only judicial institution mentioned directly in the constitution. The decision is final and cannot be contested. Congress determines the number of judges and sometimes regulates the types of cases that must be resolved, but it cannot reduce the power of the Supreme Court. Supreme Court justices and district judges are appointed by the President with the approval of the Senate and can serve for life if they behave in good faith.

The election of judges at the state level is diverse, including a system of nominations by independent commissions and popular elections. A candidate's qualifications typically include experience as a lawyer or judge.

The judicial coaching system in the U.S. separates the judicial functions from the legislative and executive, with oversight of the administration of the courts by the judicial branch. The Judicial Congress, consisting of 27 members, administers the administrative policies of the federal courts and is assisted by various committees. Congress established three administrative bodies: the Office of Court Administration (managing operations), the Federal Judicial Center (education and research), and the Sentencing Commission (sentencing guidelines).

The dismissal of federal judges can only be done through impeachment proceedings by the legislature for serious offenses such as treason, corruption, or code of ethics violations. These stops are rare; Since its establishment, only six judges have been dismissed through impeachment. Currently, there is an ongoing impeachment case against a judge in Louisiana who allegedly accepted bribes.

However, some countries do not recognize the principle of opportunity in their legal systems. For example, the United Kingdom and countries that adhere to the British legal system based on the principle of the rule of law do not recognize the principle of opportunity. Indonesia, according to the 1945 Constitution, does not recognize the principle of opportunity. However, there are exceptions in the Indonesian judicial system such as the Extraordinary Military Court (MAHMILUB) and disputes over the results of the election of the President, DPR, DPD, and regional heads handled by the Constitutional Court absolutely.

Regarding the level of appeal, the appeal legal remedy is reserved for those who are dissatisfied with the decision of the first instance. However, there are restrictions, such as certain cases that are only examined once at the first and last level by a certain judicial institution, or purely independent decisions that cannot be appealed or appealed. The authority to adjudicate the level of appeal differs between countries. There are countries whose appellate bodies only have the authority to adjudicate appeals without original authority to examine cases of the first instance. In Indonesia, appellate authority is held by the High Court (for General Justice, State Administration, Religion) and the High Military Court for military cases.

The United States judicial system is different, because in addition to the Court of Appeals, the US Supreme Court also conducts appellate examinations as well as

examination of the subject matter. The U.S. Supreme Court serves as the highest court that examines the subject matter, in contrast to the Supreme Court in Continental European countries which functions as the Court of Cassation, examining only the application of the law, not the subject matter.

Furthermore, the authority of cassation belongs to the Supreme Court as the highest judicial body. In terms, cassation means cancellation. The Supreme Court examines whether the lower court applies the law appropriately. The cassation system originated in France and was adopted by Continental European countries including Indonesia. Thus, the Supreme Court of Indonesia functions as a court of cassation, not an appeal.

Third, the authority to test laws and regulations and government actions differs between countries. In the U.S. and some other countries, all levels of courts are authorized to test government regulations and actions. In Germany there is a special Constitutional Court, in France the Constitutional Council and the Conseil d'Etat, in the UK the testing is carried out by the ordinary courts. Indonesia limits testing only to regulations under the law by the Supreme Court.

Regarding the object of testing, some countries such as the United Kingdom, France, and the Netherlands prohibit legal testing by the courts because the law is considered inviolable. On the other hand, the US, Germany, Australia, and some other countries allow for legal and all regulatory testing by the courts.

### **3.3. The Essence of Judges' Independence in Deciding Cases in Court**

The basic principle of the judiciary is the independence of judges in examining and deciding cases. The judge must decide based on the applicable law without influence or intervention from any party so that justice is truly carried out. Judicial independence is a form of judicial independence that is free from the pressure of other institutions, both above the judiciary and the government.

Suseno<sup>28</sup> explained the five characteristics of the state of law, namely: state institutions carry out their functions according to the constitution; human rights guarantees; state power is exercised only by law; the public can complain about state actions to the court; and the judiciary is free and impartial. The independence of judges aims to prevent the abuse of power by state bodies. With this freedom, the judiciary can control other powers and protect human rights from abuses by the rulers.

Juridically, the independence of judges in Indonesia is regulated in Article 24 of the 1945 Constitution which states that judicial power is an independent power to uphold law and justice. Law Number 48 of 2009 also affirms the independent judicial power for the implementation of a state of law based on Pancasila and the 1945 Constitution. Judges must be free from the intervention of any party so that the resulting verdict is objective and impartial.

An objective verdict means that the judge decides based on the facts and applicable law honestly and according to the actual circumstances. An impartial verdict means not taking sides with one party so as not to cause injustice. Such a decision provides legal certainty in society.

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<sup>28</sup> Franz Magnis-Suseno., *Etika Politik*, Jakarta, Gramedia Pustaka Utama, 2016, page.78.

The purpose of the court decision is to provide authoritative, efficient solutions (fast, simple, cheap), in accordance with the law, maintain social stability, and fairness (equal opportunities for the litigants). All of this can only be achieved if judges are free to decide cases without pressure.

Mertokusumo<sup>29</sup> emphasized that the independence of judges means that they are not dependent or tied to anyone, free from external influences, so that the verdict can be objective. Judicial freedom includes the freedom to examine and decide cases according to their beliefs and freedom from extrajudicial influence. The independence and independence of judges are an absolute unity for the sake of justice.

The independence and independence of judges is not just an ideal, but a universal principle that must exist in every judicial system in the world. The freedom of judges is not absolute, but is limited by macro factors such as the political, governmental, and economic systems, as well as micro factors such as Pancasila, the Constitution, laws, public order, morality, and the interests of the parties.

In addition, judicial independence also means that judges must be free from the influence of corruption, collusion, and nepotism. The practice of corruption in law enforcement in Indonesia is very damaging to public trust, where collusion and bribery and even buying and selling cases have often occurred.<sup>30</sup> The bribery case involving a Constitutional Court judge further tarnishes the court's authority and brings down Indonesia's reputation in the eyes of the world, from a position of honor to a meaningless position.

According to Harahap<sup>31</sup>, the independence of the judiciary must be independent from the influence of the executive. These freedoms aim to: (1) ensure an honest and fair trial, and (2) enable the courts to effectively oversee government actions.

The concept of independent judicial power in Indonesia is largely inspired by Montesquieu's theory of separation of powers (the "trias politica" theory) which divides state power into legislative, executive, and judicial. These three powers must be separate from each other and control each other in order to prevent abuse of power. Montesquieu emphasized the importance of the freedom of judicial power to protect the fundamental rights of citizens, especially from the despotism of the rulers.<sup>32</sup> If the judiciary runs neutrally without interference, then justice and truth can be realized.

Judicial independence is a universal concept that is embraced in all countries and legal systems, although its degree and form can vary gradually. This concept has

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<sup>29</sup> Sudikno Mertokusumo, *Sistem Peradilan di Indonesia*, *Jurnal Hukum Ius Quia Iustum*, Vol.6, no.9, 1997, page.4.

<sup>30</sup> Dava Prawira Wibowo and Muhammad Zumri Aqil., *Law Enforcement of Corruption Crimes by Village Apparatuses in Village Fund Allocations*, *Corruption*, Vol.4, no.1, 2023, page.30.

<sup>31</sup> M. Yahya Harahap., *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Jakarta, Sinar Grafika, 2025, page.18.

<sup>32</sup> Melvyn Richter., *The Political Theory of Montesquieu*, Cambridge, Cambridge University Press, 1977, page.31.



become a basic principle in the administration of justice around the world. The 1948 UN Declaration of Human Rights, in particular Article 10, affirms that everyone has the right to an independent and impartial tribunal. This statement shows that judicial independence is recognized as a fundamental principle by the international community.

The inclusion of Article 10 also confirms the world's concern about possible influence that undermines the neutrality of the judiciary. The independence of the judiciary is in line with the principle of the rule of law, which prioritizes free judicial power and respect for human rights.<sup>33</sup> Figures such as the International Commission of Jurist, Wahjono,<sup>34</sup> and Mukti<sup>35</sup> stated that the state of law must have a free, democratic judicial power based on an orderly legal system.

The independence of the judiciary is also recognized by the United Nations through General Assembly Resolutions No. 40/30 and 40/146 of 1985 concerning the Prevention of Crime and Treatment of Criminals. This resolution affirms that free judicial power is a judicial process that is free from all forms of restrictions, influence, pressure, threats, or interference from anyone, whether direct or indirect, and from all walks of life. The independence of judges is a universal principle that is the foundation for the administration of justice that is fair and free from the influence of other parties. In Indonesia, this is limited by constitutional and social norms and must be guarded against corrupt and collusion practices that threaten the credibility of the judiciary and the state. Judicial independence is an absolute requirement to ensure the protection of human rights and the establishment of the rule of law.<sup>36</sup>

According to Suhardi,<sup>37</sup> independence and impartiality are interrelated conditions; Independent must also be impartial. Rawls<sup>38</sup> affirmed that everyone is entitled to basic freedoms on an equal footing with others. Judicial independence as a universal principle must be guarded from judges' behavior that undermines justice. This doctrine is supported by international legal experts such as Montesquieu, Rawls, Hans Kelsen, and Indonesian legal experts such as Rahardjo.<sup>39</sup> However, in practice, this doctrine has not been fully realized, even though it is important to maintain the authority of the judiciary.

The state of law (*rechtsstaat* or rule of law) requires that the administration of

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<sup>33</sup> Hamidah Abdurrachman, Achmad Irwan Hamzani, Nayla Majestya, and Havis Aravik., From Judge's Decision to Justice: The Role of Transcendental Law to Reinforce Judicial Independence, *Journal of Legal, Ethical and Regulatory Issues*, Vol.1, No.24, 2021, page.1.

<sup>34</sup> Padmo Wahjono., *Indonesia Negara Berdasarkan Atas Hukum*, Jakarta, Ghalia Indonesia, 1986, page.78.

<sup>35</sup> Fajar Mukti ND and Yulianto Achmad., *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, Pustaka Pelajar, 2010, page.38.

<sup>36</sup> Pablo J. Martín Rodríguez., Fundamental Rights Challenges. Horizontal Effectiveness, Rule of Law and Margin of National Appreciation, *Revista de Derecho Comunitario Europeo*, Vol.25, no.6, 2021, page.1151.

<sup>37</sup> Gunarto Suhardi., Disharmoni Hukum Dalam Perundangan Tentang Pencucian Uang, *Jurnal Hukum Pro Justitia*, Vol.25, no.2, 2007, page.100.

<sup>38</sup> John Rawls., Justice as Fairness, *The Philosophical Review*, Vol.67, no.2, 1958, page.170.

<sup>39</sup> Satjipto Rahardjo., *Hukum dan Perilaku: Hidup Baik Adalah Dasar Hukum yang Baik*, Jakarta, Penerbit Buku Kompas, 2009, page.75.

state power be carried out based on fair and accountable law.<sup>40</sup> Indonesia, as a continental legal country with a centralized judicial system, adopts many elements of Continental European law, particularly the Netherlands, but also faces the typical challenges of a unitary state and unique socio-political conditions.

Genhard<sup>41</sup> and Heereveld<sup>42</sup> explain in continental countries (e.g. the Netherlands, Germany), the judiciary consists of a general court and a special court, with the Supreme Court as the highest cassation institution and the Constitutional Court as the constitutional supervisor. Judges are usually appointed for life with a strict recruitment system and lengthy training. The independence of the judiciary is maintained by limiting executive intervention, parliamentary supervision, and guaranteeing the position of judges for life. In contrast, in Anglo-Saxon countries (e.g. the US, UK), the judicial system generally consists only of the general court, with the Supreme Court as the highest court having final authority, including examining the subject matter (not just cassation). The appointment of judges is carried out by the executive with legislative approval and judges can serve for life (US) or by popular election system (states). This system emphasizes strict separation of powers (checks and balances) to maintain independence.

Indonesia is a unitary country that adheres to a continental system with a centralized judicial system, consisting of the general court, religious court, state administrative court, and military court.<sup>43</sup> The Supreme Court functions as the highest court of cassation, and the Constitutional Court is tasked with examining laws against the constitution.<sup>44</sup> The testing of regulations under the law is carried out by the Supreme Court, while the testing of constitutionalization is only in the Constitutional Court.<sup>45</sup>

Judges in Indonesia are appointed by the Honorary Council and the President with the recommendation of the Supreme Court and the Judicial Commission, and have a limited term of office until retirement age.<sup>46</sup> This system does not fully guarantee the independence and independence of judges from executive and legislative

<sup>40</sup> James R. Silkenat, James E. Hickey, and Petr Barenboim., *The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat)*, Heidelberg, Springer, 2014, page.31.

<sup>41</sup> Gerhard Van der Schyff., *Judicial Review of Legislation: A Comparative Study of the United Kingdom, the Netherlands and South Africa*, Heidelberg, Springer Science & Business Media, 2010, page.61.

<sup>42</sup> Yannic Daan van Heereveld., *Constitutional courts compared: how political are constitutional courts?: A qualitative study about the political nature of constitutional courts and the implications for the government reform discussion in the Netherlands*, Master's thesis, University of Twente, 2024.

<sup>43</sup> Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis., *The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems*, *Cogent Social Sciences*, Vol.8, no.1, 2022, page.2104710.

<sup>44</sup> Lech Garlicki., *Constitutional Courts versus Supreme Courts*, *International Journal of Constitutional Law*, Vol.5, no.1, 2007, page.50.

<sup>45</sup> Suparto Suparto., *The Problematic Implementation of Law and Regulations Testing in Indonesia*, *Jurnal Yuridika Fakultas Hukum Universitas Airlangga*, Vol.37, no.1, 2022, page.260.

<sup>46</sup> Pan Mohamad Faiz., *A Critical Analysis of Judicial Appointment Process and Tenure of Constitutional Justice in Indonesia*, *Hasanuddin Law Review*, Vol.1, no.2, 2016, page.155.

influence, coupled with the weakness of resources and the potential for politicization in the process of appointing and promoting judges. This condition has the potential to disrupt public trust in the judiciary and cast doubt on the objectivity of court decisions. Therefore, comprehensive legal reconstruction efforts are needed to strengthen the principle of judicial independence, improve professionalism, and ensure transparency and accountability in the entire judicial process. The following are important aspects in the legal reconstruction of the independence of the Indonesian judiciary:

a. Strengthening Job Assurance and Judge Protection

Judges should have a stronger independent status, for example with clearer terms of office and protection from unilateral dismissal. The model of lifetime appointment or long tenure that can be found in the Netherlands or the US needs to be reviewed to adapt to the Indonesian context in order to maintain the stability of independence.

b. Transparent and Rigorous Professional Recruitment and Training System

The recruitment system should be more transparent and meritocracy-based with comprehensive training, following in the footsteps of the Netherlands which integrates theoretical and practical education on an ongoing basis. The Judicial Commission and the judge's selection agency must be completely free from political interference.

c. Balanced Separation of Powers and Supervision

Although Indonesia adheres to a unified system, there is a need for a firmer separation of powers so that the judiciary is free from executive and legislative interference, without creating a vacuum of control. Supervision by the Judicial Commission and the checks and balances mechanism must be strengthened to maintain independence without losing accountability.

d. Strengthening the Special Judicial Institution and Constitutional Testing Indonesia

Indonesia needs to maintain and strengthen the Constitutional Court as an independent constitutional supervisory institution with the authority to test the law effectively, as in Germany and the Netherlands. This is important to ensure that the applicable laws do not conflict with the constitution and guarantee human rights.

e. Independent Management of Judicial Budgets and Resources

The government must ensure that the judicial budget does not depend on political will and the process of managing human resources must be independent of the intervention of other powers, with strict supervision by the judiciary itself.

f. Improving Indonesia's Appellate and Cassation Judicial System needs to improve the appeal and cassation mechanisms, adjust the authority of the appellate court and the Supreme Court, so that the function of the cassation court is truly a supervisory of the application of the law, not the main court of cases, according to the continental tradition. This is in contrast to the US system which allows the highest court to examine the subject matter at

once.

g. Regulation Testing Mechanism Regulation

Regulatory testing should be expanded so that courts can test not only regulations under the statute but also statutes, with clear controls and constitutional protection mechanisms. It will adopt practices in the US and Germany that allow for more thorough testing of laws and regulations.

Thus, the legal reconstruction of judicial independence in Indonesia must pay attention to the characteristics of the continental and unitary legal state, while learning from the practices of continental (Dutch, German) and Anglo-Saxon (US) countries that have advantages in appointment, protection of judges, separation of powers, as well as constitutional and regulatory testing systems. Strengthening the guarantee of the independence of judges, recruitment transparency, separation of power functions, and independence of the judicial budget are the main keys to ensuring that the judiciary in Indonesia is truly free and independent in upholding justice and the law.<sup>47</sup> With this systemic and contextual reconstruction, the judiciary in Indonesia can play an effective role as a pillar of the state of law that upholds justice and freedom from political intervention, in accordance with the values of the Indonesian constitution and democracy.

#### **4. Conclusion**

This research reveals that the Pancasila State of Law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution, has unique characteristics that distinguish it from the Continental European *rechtsstaat* model and the Anglo-Saxon rule of law. Based on the values of Pancasila, this concept integrates positive law with philosophical, ethical, and religious dimensions, emphasizing the rule of law, the protection of human rights (Article 28A-28J of the 1945 Constitution), the principle of legality (Article 28D paragraph (1)), and judicial independence (Article 24 paragraph (1)). Judicial independence, as a main pillar, requires judges to be free from external intervention, whether from the executive, legislative, or social pressures, to produce objective and fair decisions based on law and conscience. Law Number 48 of 2009 strengthens this guarantee, prohibiting outside interference in the judicial process. However, the implementation of judicial independence in Indonesia faces significant challenges, such as the history of executive intervention during the New Order period, the limited quality of human resources, inadequate training of judges, and the rampant practices of corruption, collusion, and nepotism. Bribery cases involving judges, such as those in the Constitutional Court, have damaged public trust and tarnished the integrity of the judiciary.

To overcome these challenges, legal reconstruction is needed through several strategic steps. First, strengthening the guarantee of the position of judges with a

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<sup>47</sup> Andriansyah Rahman and Muthi'ah Maizaroh., Strengthening Independence: Constitutional Interests as a Paradigm for Judicial Review in Indonesia, *Jurnal Hukum dan Peradilan*, Vol.13, no.1, 2024, page.40.

more stable term of office, adopting a lifetime appointment model like in the Netherlands, adjusted to the Indonesian context. Second, the recruitment and training system for judges must be transparent, meritocracy-based, and free from politicization, modeling on the Dutch comprehensive training system. Third, a firmer separation of powers is needed to minimize executive and legislative intervention, with strengthened oversight of the Judicial Commission. Fourth, the management of the judicial budget must be independent to avoid political dependence. Fifth, the improvement of the appeal and cassation mechanism is needed so that the Supreme Court focuses on supervising the application of the law, not examining the subject matter. Sixth, strengthening the Constitutional Court as a constitutional supervisor and expanding the authority to test regulations will ensure legal consistency with the 1945 Constitution.

By learning from the practices of the Netherlands (strict recruitment and institutional independence) and the US (strict separation of powers), Indonesia can strengthen the Pancasila State of Law. This systemic reform will ensure an independent, professional, and integrity judiciary, realizing justice, legal certainty, and benefits that are in line with the values of Pancasila and the constitution. Legal reconstruction is needed to strengthen judicial independence through strengthening the guarantee of judgeships, a transparent recruitment system, a firm separation of powers, independent management of the judicial budget, and improving the appeal and cassation mechanisms. Learning from the Dutch and US judicial systems, Indonesia can adopt strict judicial appointment practices and lifetime protection of office to enhance independence. Strengthening the Constitutional Court and testing more comprehensive regulations are also crucial to maintain constitutional consistency. With contextual systemic reforms, the Pancasila State of Law can realize a fair, independent, and integrity judiciary, supporting law enforcement that upholds the values of justice, legal certainty, and benefits for the Indonesian people.

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### **Regulations:**

- Article 1 paragraph (3) of the 1945 Constitution;
- Article 28A-28J of the 1945 Constitution;
- Article 4 paragraph (1) of Law Number 37 of 2008 concerning the Ombudsman;
- Article 8 of The Universal Declaration of Human Rights 1948;
- Law Number 14 of 1970;
- Law Number 28 of 1999 concerning the Implementation of a Clean and Free State;



Law Number 48 of 2009 concerning Judicial Power;

Law Number 5 of 2014 concerning the State Civil Apparatus;

Law Number 7 of 1947.