



LEGAL CERTAINTY DUALISM OF CIVILIAN POSITIONS ACTIVE MEMBERS OF THE INDONESIAN POLICE

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ABSTRACT

This study aims to analyze the legal status of active police officers following the Constitutional Court's ruling to formulate a direction for legal harmonization consistent with the principle of legal certainty. This study uses a normative juridical method. The results indicate that the removal of the phrase "whether or not based on assignment from the Chief of the Indonesian National Police" strengthens the obligation for police officers to resign or take early retirement before assuming positions outside the police force. This ruling closes the legal loophole related to active assignments, effectively reviving the dual function of the police within the civilian bureaucracy. Constitutionally, this decision strengthens the principle of legal certainty by defining the boundaries of authority between the functions of the Indonesian National Police and post-reform civilian positions, thus ensuring that norms within the legal entity are no longer expanded by explanations that contradict their substance. This limitation maintains the neutrality of the Indonesian National Police, preventing it from becoming an instrument of political or bureaucratic power.

1. INTRODUCTION

Article 28 paragraph (3) of the Indonesian National Police Law specifically stipulates: "Members of the Indonesian National Police may hold positions outside the police force after

resigning or retiring from the police force.”¹² The legal norm that became the main dispute in the Constitutional Court (MK) was the conflict between this main norm and the controversial phrase in the Explanation of Article 28 paragraph (3), namely “or not based on an assignment from the Chief of Police.” This permissive phrase creates a legal loophole (pragmatic exception), which is considered unconstitutional because it creates legal uncertainty and obscures the substance of the obligation to resign, violating the principle of fair legal certainty (Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia). This practice of active assignment is a de facto threat because it allows the transfer of personnel without a transfer of status, eroding the principle of institutional neutrality.³

The institutional development of the Indonesian National Police (Polri) after 1998 was a crucial stage in the national effort to consolidate democracy and reinforce the doctrine of civilian supremacy.⁴⁵ This consolidation was driven by deep historical trauma regarding the dual function doctrine of the Indonesian Armed Forces (ABRI), which allowed the military and police to interfere in political, bureaucratic, and social affairs.⁶ The main pillars of this reform were the separation of the Polri from the Indonesian National Armed Forces (TNI) and the affirmation that all security and defense institutions must return to their professional functions, away from practical politics.⁷⁸

The experience of the ABRI's dual function has created an understanding among academics and jurists that the concentration of coercive power (security/defense) and bureaucratic power (government) within a single institutional entity is highly dangerous for democracy.⁹ The risk of

¹ Listiono Heri Darmadi, Saepuddin Zahri, and Abdul Latif Mahfuz. Analisis Penerapan Pasal 28 Ayat (2) Peraturan Kapolri Nomor 14 Tahun 2011 Terhadap Oknum Anggota Polri Yang Melakukan Penyalahgunaan Narkotika Pada Polda Sumatera Selatan. *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana*, Vol.4, No.2 (2022), p.611-623. <http://dx.doi.org/10.46930/jurnalrectum.v4i2.3477>

² Fairuz Nasywa Dien, Try Intan Febriana Magdalena, Yohanes Brilian Jemadur, and Sherliana Ika Pratiwi. Konstitusionalitas Penempatan Anggota Polri pada Jabatan Sipil: Analisa Putusan MK Nomor 15/PUU-XX/2022. *Jurnal Hukum Lex Generalis*, Vol 6, No.10 (2026), <https://doi.org/10.56370/jhlq.v6i10.3384>.

³ Ronald Limanjaya and Tatang Ruchimat. Penunjukan Anggota Polri Aktif Untuk Menduduki Jabatan di Luar Kepolisian Ditinjau Dari Asas Kepastian Hukum. *Jurnal Hukum Adigama*, Vol.3, No.2 (2020), p.826-845. <https://doi.org/10.24912/adigama.v3i2.10593>.

⁴ Farrel Eden Surbakti and Ali Abdilah. Perbandingan Kedudukan dan Kewenangan Kepolisian dalam Konstitusi yang Pernah Berlaku di Indonesia. *Jurnal Hukum & Pembangunan*, Vol.51, No.1 (2021), p.146-158. <https://doi.org/10.21143/jhp.vol51.no1.3012>

⁵ Zahidah Dina Firdausi and Yusa Djujandi. Hubungan Politik, Polisi dan Militer Terhadap Perkembangan Demokrasi di Indonesia pada Era Reformasi. *Aliansi: Jurnal Politik, Keamanan dan Hubungan Internasional*, Vol.3, No.1 (2024), p.1-10. <https://doi.org/10.24198/aliansi.v3i1.52252>.

⁶ Ikhsan Yosarie, Revisi Tanpa Semangat Reformasi: Residu Dwifungsi ABRI Dalam Revisi Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia: Revision Without the Spirit of Reform: Residues of the ABRI's Dual Function in the Revision of Law Number 34 of 2004 Concerning the Indonesian National Armed Forces. *SOCIA: Jurnal Ilmu-Ilmu Sosial*, Vol.22, No.1 (2025), p.22-31. ____

⁷ Yasin, Bukhari, et al. Legal Issues Regarding the Involvement of Active Indonesian National Armed Forces (TNI) in Ministries or Institutions in Indonesia. *Pelita Law Journal*, Vol.6, No.1 (May 2025), p.340-349. DOI:<https://doi.org/10.37366/jhp.v6i1.5829>.

⁸ Afrizal Haris, Jejak Reformasi Pertahanan-Kepolisian: Pemisahan Polri Dan Penghapusan Dwi Fungsi Abri Dalam Transisi Demokrasi Era Gus Dur. *JISIPOL/ Jurnal Ilmu Sosial dan Ilmu Politik*, Vol.10, No.1 (2026). p.16-26

⁹ Ikhsan Yosarie and Oktaviani. Revisi Tanpa Semangat Reformasi: Residu Dwifungsi ABRI Dalam Revisi Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia. *SOCIA: Jurnal Ilmu-Ilmu Sosial*, Vol.22, No.1 (2025), p. 22-31. <https://doi.org/10.21831/socia.v22i1.88970>.

de facto dual function arises when security institutions begin to assume a dominant role in bureaucracy and social life. Therefore, post-reform Indonesian law demands a strict structural "constitutional firewall." This restriction should not only prohibit partisan political activity but also prohibit overlapping institutional functions, which is realized through mandatory resignation or retirement for Polri members who wish to hold civilian positions.¹⁰¹¹

The Indonesian National Police (Polri)'s position as a state instrument maintaining public security and order (Kamtibmas) is regulated under Article 30 of the 1945 Constitution of the Republic of Indonesia, which fundamentally separates the security function (Polri) from the defense function (TNI). As a constitutional follow-up, Law Number 2 of 2002 concerning the Indonesian National Police (Polri Law) places the Polri under and directly responsible to the President as Head of State.

The decision to place the Indonesian National Police (Polri) directly under the President, rather than under a ministry (such as the Ministry of Home Affairs or the Ministry of Justice, which was once debated), represents a unique institutional design strategy to achieve operational independence and the highest level of accountability within a civilian framework.¹² This operational independence is crucial to guarantee the neutrality and professionalism of the Indonesian National Police (Polri) as law enforcers.¹³ This institution is considered to have sui generis status (special civil service) equivalent to a ministry but with distinct functions from regular civil servants. Its primary functions include maintaining public order and security (Kamtibmas), law enforcement, protection, and service to the community.¹⁴

Article 28 of the National Police Law of the Republic of Indonesia regulates restrictions for members of the National Police who are still active in political life and positions outside the police institution. This provision emphasizes that the National Police must be neutral in political life and must not be involved in practical political activities.¹⁵ Police members also do not exercise their right to vote or be elected as long as they are still active members of the police. This restriction aims to maintain professionalism, independence and public trust in the National Police as a state tool that carries out the functions of maintaining security and public order, law enforcement, protection, protection and service to the community. In addition, new members of the National Police can hold positions outside the police after resigning or entering

¹⁰ Decision of the Constitutional Court of the Republic of Indonesia Number 114/PUU-XXIII/2025.

¹¹ Moh Bagus, Afif Hidayatul Mahmudah, Amim Thobary, and Faizah Maulidah. Fenomena Pengisian Jabatan Pegawai Negeri Sipil Oleh TNI/POLRI. *Sosio Yustisia: Jurnal Hukum dan Perubahan Sosial*, Vol.1, No.1 (2021), p.108–125. <https://doi.org/10.15642/sosyus.v1i1.69>.

¹² Bakharuddin Muhammad Syah. Mengapa Polri Harus Tetap Berada di Bawah Presiden: Sebuah Tinjauan Normatif, Komparatif, dan Kontekstual. *Jurnal Sosial Teknologi*, Vol.6, No.6 (2026), p.2078–2090. <https://doi.org/10.59188/jurnalsostech.v6i6.32870>.

¹³ Janpatar Simamora and Leonardo David Simatupang. Penguatan Kedudukan dan Kewenangan Konstitusional Polri sebagai Alat Negara dalam Bidang Keamanan dan Ketertiban. *Jurnal Negara Hukum*, Vol.15, No.2 (2024), p.159–181. <https://doi.org/10.22212/jnh.v15i2.4424>.

¹⁴ Purwaningsih, Desy, and A. Salman Maggalatung. The Position of the Indonesian National Police as Acting Governors in the Indonesian Government System. *Journal of Legal Research*, Vol.1, No.1 (2019), p.1–22. <https://doi.org/10.15408/jlr.v1i1.11905>.

¹⁵ Anib Bastian, Rustam Hs. Akili, and Yusrianto Kadir. Netralitas Kepolisian Republik Indonesia Pada Penyelenggaraan Pemilihan Umum. *Jurnal Hukum, Politik dan Ilmu Sosial*, Vol.3, No.2 (2024), p.96–104. <https://doi.org/10.55606/jhpis.v3i2.3721>.

retirement from the police service, so that there is no mixing of police authority with the interests of civil or political positions.¹⁶

The legal norm that is the main dispute and object of material review in the Constitutional Court (MK) is Article 28 paragraph (3) and its explanation. Specifically, the phrase "or not based on assignment from the Chief of Police" in the Explanation of Article 28 paragraph (3) becomes the entry point for the placement of active Polri members in various state civil institutions, such as the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), the National Counterterrorism Agency (BNPT), and the National Cyber and Crypto Agency (BSSN).¹⁷¹⁸

This permissive phrase creates a legal loophole, allowing the placement of active police officers in various state civil institutions (KPK, BNN, BNPT). In legal analysis, this phrase is an example of a pragmatic exception that illegally expands the meaning of an already clear parent norm (legal formalism). The cancellation of this phrase is necessary because it is considered to create legal uncertainty and obscure the substance of the obligation to resign, which is the core of the principle of legal certainty (Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia). This practice of active assignment is a de facto threat because it allows the transfer of personnel without a transfer of status, eroding the principles of institutional neutrality and meritocracy for civil professionals.

The statement that the reform of the Indonesian National Police into a civilian institution was clearly implemented during the era of President Abdurrahman Wahid (Gus Dur) is the foundation for interpreting the current status of the Indonesian National Police.

The most significant step in the reform of the Indonesian National Police (Polri) was its separation from the ABRI (Indonesian Armed Forces) structure, with which it had been integrated since 1961. This separation was an absolute prerequisite for realizing the professionalism of the police as civilian law enforcers. This reform was driven by the political will of President Abdurrahman Wahid, although the process was marked by political turbulence, including a leadership conflict ("dualism") between Gus Dur and Pol. General Suroko Bimantoro.¹⁹

The definitive separation of the Indonesian National Police (Polri) from the Indonesian National Armed Forces (TNI) on July 1, 2000, was not merely an administrative separation, but rather an affirmation of civilian executive supremacy over deeply rooted militaristic traditions. The

¹⁶ Elvi Alfian. Tugas dan Fungsi Kepolisian Untuk Meningkatkan Kepercayaan Publik terhadap Penegak Hukum. *Legalitas: Jurnal Hukum*, Vol.12, No.1 (2020), p.27-37. <https://doi.org/10.33087/legalitas.v12i1.192>.

¹⁷ Constitutional Court Prohibits Police from Becoming Civil Servants Before Resigning, "What is the Response of the Police and Government?", WIB. <https://nasional.kompas.com/read/2025/11/14/08515651/mk-ketuk-palu-larang-polisi-jadi-pejabat-sipil-dahulu-mundur-apa-tanggapan> accessed 27 November, 2025, at 11:14 a.m.

¹⁸ Adrinus Adhiwira Yoga Pradana, Chairul Muriman Setyabudi, and Surya Dharma. Analisis Yuridis Kedudukan Jabatan Anggota Polri Aktif di Luar Institusi Polri di Tengah Isu Dwi-Fungsi Polri. *Syntax Literate: Jurnal Ilmiah Indonesia*, Vol.6, No.3, (2021) p.1062-1074. <https://doi.org/10.36418/syntax-literate.v6i3.2296>.

¹⁹ Amostian, Yusriyadi, and Ana Silviana. Reformasi Polri Melalui Penguatan Fungsi Dan Kewenangan Komisi Kepolisian Nasional Dalam Melakukan Pengawasan Eksternal Terhadap Polri. *Jurnal Pembangunan Hukum Indonesia*, Vol.5, No.3 (2023), p.510-522. <https://doi.org/10.14710/jphi.v5i3.510-522>.

success of this separation amidst the political crisis strengthened the legitimacy of the reforms.²⁰

The legal basis for the separation and civilian position of the Indonesian National Police was established through the main legal instrument which followed up on changes to the 1945 Constitution of the Republic of Indonesia. MPR Decree Number VII/MPR/2000 became an important basis because it strictly separated the defense function carried out by the Indonesian National Army from the security function carried out by the Indonesian National Police. This separation marks a change in the position of the National Police from part of the armed forces to a civilian institution with authority in the field of security and law enforcement. This arrangement was then strengthened through Presidential Regulation Number 89 of 2000 and Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Law Number 2 of 2002 places the National Police directly under the President, so this position is intended to maintain the professionalism and neutrality of the National Police from possible interference from civil ministries or military institutions. The placement of the National Police under the President also shows that there is a balance between the need for operational autonomy in carrying out law enforcement in a non-discriminatory manner with the highest level of civil political supervision in the Indonesian constitutional system.

The new paradigm of the Indonesian National Police (Polri) post-reform demands functional differentiation. The police must abandon the militaristic model that instills fear in the public and focus on becoming a professional and community-oriented institution, with the primary duties of law enforcement, protection, patronage, and service.²¹

This functional transformation was supported by the post-1999 budget increase. The threat of de facto dual function arising from the assignment of active personnel to the civil bureaucracy was perceived as a threat to this professionalism. If active personnel were allocated to Goal Attainment functions (achieving government objectives), their focus would be diverted from law enforcement (Integration), repeating the failures of the New Order, when law enforcement was not a top priority.²²

Previous research by Huda found that security sector reform involves not only institutional changes but also limits on the role of armed forces to prevent them from re-dominating the political sphere and civil bureaucracy.²³ Other studies by Firdausi and Djuyandi emphasize that the integration of the civilian-oriented National Police (Polri) into the Armed Forces (ABRI) during the New Order era constituted a deviation from democratic principles, as it led to the involvement of security forces in socio-political functions. These studies provide a theoretical basis for the argument that police reform must focus on separating security functions from practical politics and strengthening civilian supremacy. However, neither study has specifically

²⁰Suyono, Yoyok Ucok. *Police Law (The Position of the Police in the Indonesian Constitutional System After the Amendment to the 1945 Constitution)*. Yogyakarta: Laksbang Grafika, 2013, p.5.

²¹Ibid., p.46.

²²Ibid., p.4.

²³ Ni'matul Huda, Hak Politik Tentara Nasional Indonesia dan Kepolisian Negara Republik Indonesia Pasca Reformasi, *Jurnal Hukum Ius Quia Iustum*, Vol.21, No.2 (April 2014), p.203-226. <https://doi.org/10.20885/iustum.vol21.iss2.art3>.

examined the normative issues surrounding Article 28 paragraph (3) of the Police Law and its explanatory notes—particularly the phrase that allows active police officers to be assigned to civilian posts via the National Police Chief's authorization. Consequently, the research gap addressed here lies in a specific analysis of the conflict between the statutory text of Article 28 paragraph (3) and its explanatory notes, as well as the potential for a *de facto* resurgence of the police's "dual function" (dwifungsi) within Indonesia's post-reform constitutional system.

This study aims to analyze the legal status of police officers holding positions outside the police institution following Constitutional Court Decision Number 114/PUU-XXIII/2025, specifically regarding the invalidation of the phrase "or not based on an assignment from the National Police Chief" found in the explanatory notes to Article 28 paragraph (3) of the Police Law. It also seeks to examine the decision's implications for legal certainty, police neutrality, civilian supremacy, and the prevention of a *de facto* return to the "dual function" model, while formulating a path for legal harmonization to ensure that the placement of police officers in civilian roles occurs only through clear and professional status-transfer mechanisms.

2. RESEARCH METHODS

This research is of a normative juridical nature, namely research that discusses doctrines or principles with legal science.²⁴ The normative research method is also known as doctrinal research, which is a research that analyzes the law, both as written in books and the law decided by the judge through the court process.²⁵ This normative legal research is a scientific research procedure to find a truth based on the logic of legal science from its normative side.²⁶ In this study, normative legal research is based on secondary data and emphasizes speculative-theoretical steps and normative-qualitative analysis.²⁷ Research specifications are carried out in a prescriptive manner, namely a research approach that aims to provide recommendations or suggestions for concrete actions to overcome problems or achieve certain goals.²⁸ The approach in this legal research uses the statutory approach (Statute Approach) and the case approach (Case Approach). The statutory approach is carried out by examining all laws and regulations related to the legal issue being studied. Research with this statutory approach will open up opportunities for researchers to study the consistency and conformity of rules between one law and another or between a law and the Constitution or other regulations. The research approaches include a case approach (MK Decision No. 114/PUU-XXIII/2025), a conceptual approach, and a comparative legal approach. The method system used in observation and investigation is Hermeneutics, used to interpret the historical-teleological meaning and purpose of the institutional reform of the National Police and the doctrine of civil supremacy. The research quality criteria emphasize authenticity and reflectivity, ensuring that the analysis and prescriptive recommendations produced are relevant to the

²⁴Zainuddin. *Legal Research Methods*. Jakarta: Sinar Grafika, 2010, p.24.

²⁵Amirudin and Zainal Asikin. *Introduction to Legal Research Methods*. Jakarta: Kencana, 2006, p.118.

²⁶ Ibrahim, Johny. *Theory & Methodology of Normative Legal Research*. Malang: Bayumedia Publishing, 2008, fourth edition, p.57.

²⁷Supranto, J. *Legal and Statistical Research Methods*. Jakarta: PT Raja Grafindo Persada, 2003, p.3.

²⁸Hadari Nawawi, *Social Research Instruments*, Yogyakarta: Gajah Mada University Press, 1992, p.47.

demands of consolidating the rule of law.²⁹

3. RESULTS AND DISCUSSION

3.1. Theoretical Analysis for the Constitutional Interpretation of Article 28 of the 1945 Constitution within the Framework of Security/Defense Dualism

Constitutional Court Decision No. 114/PUU-XXIII/2025 can be analyzed through two main theoretical lenses in political science and sociology, namely Montesquieu's Trias Politica and Talcott Parsons' social system theory. Indonesia adheres to a modified Trias Politica system, in which the division of powers (Executive, Legislative,³⁰ Judicial) is complemented by a checks and balances mechanism that was strengthened after the 1945 Amendment to the Constitution of the Republic of Indonesia.^{31,32}

The implications for the position of the Indonesian National Police can be seen from its position as a state instrument under the President within the scope of executive power, with the main function of enforcing the law and maintaining domestic security.³³ This position places the National Police as a civil institution that has great authority in maintaining public order, enforcing the law, and providing protection, guidance and service to the community³⁴.

In constitutional developments, there has been talk of placing the National Police under the Ministry of Home Affairs or establishing a ministry of internal security for reasons of strengthening accountability, administrative supervision and internal balance within the executive body. The placement of the National Police under the ministry is considered to clarify the coordinative relationship between the National Police and regional governments, governors and other civil institutions, especially in matters of regional security and public services.³⁵ However, the position of the National Police, which is directly under the President, must also be protected so that it does not turn into an instrument of power that is free from legal supervision. Constitutional Court Decision Number 114/2025 is a form of supervision by the judiciary regarding executive practices which provide space for assigning active members of

²⁹ Peter Muhmud Marzuki. *Legal Research*. Jakarta: Kencana Prenada Media Group, 2011, p.93-94.

³⁰ Rizky Andrian Ramadhan Pulungan and Lita Tyesta A.L.W. Mekanisme Pelaksanaan Prinsip Checks and Balances Antara Lembaga Legislatif dan Eksekutif dalam Pembentukan Undang-Undang dalam Sistem Ketatanegaraan Indonesia. *Jurnal Pembangunan Hukum Indonesia*, Vol.4, No.2 (2022), p.280-293. <https://doi.org/10.14710/jphi.v4i2.280-293>.

³¹ Suparto Suparto, The Theory of Separation of Powers and the Constitution According to Western and Islamic Countries, *Journal of Islamic Law*, Vol.XIX, No.1 (2019), p.135.

³² Sunarto Sunarto, Prinsip Checks and Balances Dalam Sistem Ketatanegaraan Indonesia, *Masalah-Masalah Hukum*, Vol.45, No.2 (2016), p.157-163. <https://doi.org/10.14710/mmh.45.2.2016.157-163>

³³ Rizky Andrian Ramadhan Pulungan and Lita Tyesta A.L.W., Mekanisme Pelaksanaan Prinsip Checks And Balances Antara Lembaga Legislatif dan Eksekutif dalam Pembentukan Undang-Undang dalam Sistem Ketatanegaraan Indonesia, *Jurnal Pembangunan Hukum Indonesia*, Vol.4, No.2 (2022), p.280-293. <https://doi.org/10.14710/jphi.v4i2.280-293>

³⁴ Chuasanga A., Ong Argo Victoria. Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2, No.1 (2019), p.131-138, DOI: <https://dx.doi.org/10.30659/jdh.v2i1.4218>

³⁵ Iyah Faniyah and Syaiful Wachid. Keberadaan Komisi Kepolisian Nasional Sebagai Lembaga Pengawasan Fungsional Bagi Kepolisian Nasional Indonesia Dalam Sistem Konstitusi Indonesia. *Unes Journal of Swara Justisia*, Vol.10, No.1 (2026), p.163–170. <https://doi.org/10.31933/tx51v934>.

the National Police to positions outside the police.³⁶ Through this decision, the Constitutional Court limited the expansion of executive authority which could obscure the main function of the National Police as a law enforcement institution. The prohibition on appointing active Polri members to state positions aims to maintain institutional neutrality so that the Polri does not turn into a tool of political or bureaucratic power.³⁷³⁸ This limitation is also important to prevent the concentration of power in one institution that simultaneously carries out law enforcement functions, bureaucratic regulatory functions, and socio-political functions, because this situation can revive historical concerns about ABR's dual-function practice.³⁹

Talcott Parsons views society as a social system that can only survive if the four main functions in the AGIL scheme run in balance, namely adaptation in the economic field,⁴⁰ achieving goals in the political and governmental fields, integration in the legal and social fields, and maintaining values in the cultural field. In this framework of thought, the National Police of the Republic of Indonesia together with the legal system in general have an integration function, because their main tasks are related to maintaining social order, resolving conflicts, enforcing legal norms, and maintaining community cohesion.⁴¹ Problems arise when active members of the National Police are placed in ministries or civil institutions such as the Corruption Eradication Commission, the National Narcotics Agency, or certain ministries that are functionally closer to achieving government goals.⁴² This placement can lead to confusion in roles because officials who are supposed to carry out legal integration functions also enter the bureaucratic space and achieve government agendas. The Constitutional Court's decision requiring resignation or retirement for active members of the National Police before holding positions outside the police can be understood as an effort to maintain functional differentiation between subsystems.⁴³ This decision encourages the National Police to remain focused on its main function as guardian of the integration of law and social order, as well as preventing the shift of its function to the realm of government. If the function of integration and the function of achieving goals overlap, for example when law enforcement officials actively occupy political or bureaucratic positions, then there can be a functional imbalance in the social system which ultimately disrupts the stability of the order. The Constitutional Court's

³⁶ Nasrullah. Tinjauan Terhadap Independensi Komisi Polisi Nasional Dalam Perspektif Lembaga Negara Independen. *UNES Law Review*, Vol.5, No.4 (2023), p.3581–3592. <https://doi.org/10.31933/unesrev.v5i4.677>.

³⁷ Mohammad Darry and Diah Asri. Problematika Netralitas Polri di Era Jokowi: Keterlibatan dalam Politik Praktis dan Bisnis. *Jurnal Politik Indonesia*, Vol.8, No.1 (2022), p.30-48. <https://doi.org/10.20473/jpi.v8i1.33927>.

³⁸ Rian Satya Putra, Indarja, and Amalia Diamantina. Analisis Yuridis Fungsi Komisi Kepolisian Nasional Dalam Meningkatkan Profesionalitas Kepolisian Republik Indonesia. *Diponegoro Law Journal*, Vol.14, No.2 (2025). <https://doi.org/10.14710/dlj.2025.50228>.

³⁹ Yusuf Yusuf and Harmoko Harmoko. Aktualisasi Komisi Kepolisian Nasional Dalam Mewujudkan Reformasi Kepolisian Negara Republik Indonesia. *JUSTISI*, Vol.10, No.1 (2024), p.138–158. <https://doi.org/10.33506/jurnaljustisi.v10i1.2392>.

⁴⁰ Andina Prasetya, Muhammad Fadhil Nurdin, and Wahyu Gunawan. Perubahan Sosial Masyarakat dalam Perspektif Sosiologi Talcott Parsons di Era New Normal. *Sosietas: Jurnal Pendidikan Sosiologi*, Vol.11, No.1 (2021), p.929-939. <https://doi.org/10.17509/sosietas.v11i1.36088>.

⁴¹ Ritzer, George., and Douglas J. Goodman. *Sociological Theory, From Classical Sociological Theory to the Latest Developments in Postmodern Social Theory*. Yogyakarta: Kreasi Wacana, 2009, p.256-268.

⁴² Rahman Amin and Muhammad Fikri Al Aziz. Penguatan Komisi Kepolisian Nasional Dalam Pengawasan Penyidikan Tindak Pidana Oleh Polri. *KRTHA Bhayangkara*, Vol.17, No.1 (2023), p.1–26. <https://doi.org/10.31599/krtha.v17i1.1855>.

⁴³ Dian Ayu Widya Ningrum et al., Format Ideal Tindak Lanjut Putusan Mahkamah Konstitusi untuk Mengefektifkan Asas Erga Omnes, *Jurnal Konstitusi*, Vol.19 No.2, (2022), p.314-358. <https://doi.org/10.31078/jk1924>.

decision can be seen as a correction of the legal subsystem to restore institutional balance so that the separation of roles is in line with the direction of reform.

Academic criticism of the imperfect Constitutional Court Decision No. 114/2025 argues that the Court should interpret Article 28 of the 1945 Constitution of the Republic of Indonesia, which guarantees legal certainty and equal treatment (Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia), *mutatis mutandis* for state institutions.⁴⁴ This interpretation requires constitutional recognition that the status of the Indonesian National Police is completely civilian, different from the Indonesian National Armed Forces, and therefore, restrictions on dual positions must be seen as protecting the integrity of the civilian bureaucracy, which is a logical consequence of civilian supremacy.

The separation of duties between the Indonesian National Armed Forces (TNI) (defense) and the Indonesian National Police (Polri) (domestic security) in Article 30 of the 1945 Constitution of the Republic of Indonesia is the core of post-reform professionalism. Constitutional Court Decision No. 114/2025 implicitly supports the redrawing of National Security boundaries. By restricting Polri access to the civilian bureaucracy, this ruling creates a strong precedent that can be used to challenge the placement of members of other security institutions, particularly active TNI personnel, in ministries or civilian institutions.⁴⁵

If the Indonesian National Police (Polri), as a domestic security instrument, is prohibited from holding active civilian positions, then the Indonesian National Armed Forces (TNI), as a defense instrument (with a more militaristic function), must be subject to similar or even stricter restrictions within the civilian bureaucracy. This Constitutional Court ruling is a significant step in defining the boundaries between the integration function (Polri) and the defense function (TNI) within the national political system.

3.2. Comparative Jurisprudence: Restrictions on Political Rights and External Positions of Security Forces

Restrictions on political rights and external positions for security forces are a universal principle applied in almost all democracies.⁴⁶ The goal is to ensure the impartiality of law enforcement and the legitimacy of security institutions. The nature of these restrictions varies between common law and civil law systems.^{47,48}

a. United States: The Hatch Act and Partisan Restrictions

⁴⁴ Rio Adrian dan Erna Herlinda, Pengisian Jabatan Sipil Oleh Anggota Polri Aktif Pasca Putusan MK Nomor 114/PUU-XXIII/2025 Ditinjau Dari Prinsip Meritokrasi, *Jurnal Media Akademik*, Vol.4, No.1 (2026), p.1-24. <https://doi.org/10.62281/gsxjdc20>.

⁴⁵ Oki Wijayanti et al., Analisis Yuridis Rangkap Jabatan TNI dan Polri Ditinjau Dari Peraturan Perundang-Undangan, *Jurnal Ilmiah Wahana Pendidikan*, Vol.11, No.1.C (2025), p.175-186

⁴⁶ Krista Stelkia. An Exploratory Study on Police Oversight in British Columbia: The Dynamics of Accountability for Royal Canadian Mounted Police and Municipal Police. *SAGE Open*, Vol.10, No.1 (2020). <https://doi.org/10.1177/2158244019899088>.

⁴⁷ Adlin Budhiawan, Tan Kamello, Ningrum Natasya Sirait, and Hasim Purba, *Op.Cit.*, p.5087.

⁴⁸ Joseph Jaconelli. Constitutional Disqualification: A Critique of English and English-Derived Law. *Vienna Journal on International Constitutional Law*, Vol.14, No.2 (2020), p.167-197. <https://doi.org/10.1515/ici-2019-0056>.

In the United States, restrictions on political activity for federal government employees, including law enforcement officers, are regulated by the Hatch Act at 5 U.S.C. ⁴⁹ This law aims to limit the involvement of federal employees in partisan political activities so that the implementation of government duties remains professional, neutral, and not influenced by the interests of certain political parties. The main prohibitions in this regulation include the prohibition on running for public office in partisan elections if the salary comes entirely from federal funds, the prohibition on using the authority or influence of office to interfere or influence the results of elections or the nomination process, as well as the prohibition on raising funds or contributions for partisan political parties or certain candidates.⁵⁰ This arrangement shows that the neutrality of state apparatus is placed as an important element in maintaining public trust, preventing abuse of office, and ensuring that law enforcement agencies work based on legal interests and public services, not electoral political interests.

The Resign-to-Run concept also applies in many jurisdictions, such as Florida, where elected or appointed officials must resign if they run for another public office whose term overlaps. A key focus in the US is partisan neutrality preventing government employees from abusing their positions for the benefit of a political party.

b. United Kingdom (UK): Absolute Disqualification from Parliament

The UK model imposes stricter restrictions, particularly on active political involvement at the national level. Members of the police force are explicitly disqualified from running for Parliament (MP).⁵¹

The resignation requirement in the UK is absolute: a police officer must resign and complete the notice period before the nomination date to avoid having a contract of employment with the police force at the time of nomination. In addition to the formal political ban, members are generally required to refrain from any activity that might tend to interfere with or create the appearance of an impartial discharge of duty.⁵²

c. Germany (*Beamtenrecht*): Loyalty Obligations and Special Status

Police in Germany are part of the Beamte (professional civil service), which enjoys a special legal status under the Beamtenrecht system. This status demands a high level of service and loyalty (Dienstpflicht and Loyalitätspflicht) to the state and the constitution (Article 33 of the

⁴⁹ 5 USC §§ 7321-7326 (2024).

⁵⁰ US Office of Special Counsel State, DC, or Local Employee Hatch Act Information, <https://osc.gov/Services/Pages/HatchAct-StateLocal.aspx#tabGroup12|tabGroup31>. accessed on 27 November, 2025, at 12:14 WIB.

⁵¹UK Parliament 2025, "Who can stand as an MP?" <https://www.parliament.uk/about/mps-and-lords/members/electing-mps/candidates/>. accessed on 27 November, 2025, at 12.14 WIB.

⁵² Electoral Commission, "Qualifications and disqualifications for standing for election (with PCC)," Guidance for Candidates and Agents at Combined County Authority Mayoral elections, The Electoral Commission, <https://www.electoralcommission.org.uk/guidance-candidates-and-agents-combined-county-authority-mayoral-elections/what-you-need-know-you-stand-a-candidate/qualifications-and-disqualifications-standing-election-pcc/disqualifications/working-police>. accessed on 27 November, 2025, at 12:20 WIB.

Basic Law).⁵³

Although German citizens have equal political rights, their status as Beamte requires them to support a free democratic basic order and to carry out their state duties (hoheitliche Aufgaben) in a non-partisan manner. A frequently used catchphrase is that the police have "no connection with intelligence or political services." Flexibility in assignments between ministries/agencies (transfers of duties) is possible within the framework of Beamtenrecht, provided that the employee remains bound by the obligation of professional loyalty. However, political civil servants (political civil servants) who can be dismissed at any time are a very small group (less than 0.5% of the total federal employees) and are explicitly regulated by federal law.⁵⁴

d. France: Regulation *Détachement*

The French system regulates placement between public agencies through a *détachement* mechanism, stipulated in the Code General of Public Function. *Détachement* allows public officials to be temporarily transferred to another administration without losing their status in the original administration.⁵⁵

While the principle of professional neutrality is upheld, France faces unique challenges due to its powerful police unions. These unions sometimes engage openly in the political arena, creating tension between demands for professional neutrality and freedom of expression and representation of the police force's interests.⁵⁶

3.3. Legal Review of Constitutional Court Decision No. 114/PUU-XXIII/2025

The Constitution of the Republic of Indonesia emphasizes that the police are a state apparatus for maintaining the security and order of Indonesian society. Article 30 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that "The Republic of Indonesia State Police as a state apparatus that maintains the security and order of society has the duty to protect, serve, and uphold the law."

Structurally, the Republic of Indonesia National Police is under the President and is led by the Chief of the Republic of Indonesia National Police, hereinafter referred to as the Chief of Police. In carrying out its duties, it must be based on statutory regulations and is responsible to the President.⁵⁷

The Constitutional Court (MK) in Decision 114/PUU-XXIII/2025 decided to grant the applicant's request, canceling the phrase "or not based on assignment from the Chief of Police" in the

⁵³ Federal Ministry of the Interior and Community. *The federal public service*. Druck- und Verlagshaus Zarbock, Berlin, 2024, p.31.

⁵⁴ Ibid., p.37.

⁵⁵ Portail de la Fonction publique, "Détachement," Ministère de la Transformation Publique, July 7, 2020, <https://www.fonction-publique.gouv.fr/files/files/ArchivePortailFP/www.fonction-publique.gouv.fr/detachement.html>. accessed November 27, 2025, at 12:27 WIB.

⁵⁶ Roché, Sebastian, et al. Independence Police Complaints Authorities' Network (IPCAN). Grenoble-Alpes University, Sciences Po Grenoble, 2022, p.18.

⁵⁷ Huda, Ni'matul. Indonesian Constitutional Law. Jakarta: PT Raja Grafindo Persada, 2010, p.236.

Explanation of Article 28 paragraph (3) of the Indonesian National Police Law. The basis for the MK's legal considerations (*Ratio Decidendi*) is the affirmation that the main norm of Article 28 paragraph (3) which requires resignation or retirement is *expressis verbis*, namely firm and clear, so that it does not require other interpretations that would obscure its substance.⁵⁸

This decision affirms the Court's prioritization of constitutional security by upholding the Institutional Neutrality Doctrine, which holds that the risks of politicizing security institutions and the fear of a return to ABRI's dual function outweigh the benefits of functional integration. By eliminating the assignment loophole, the Constitutional Court judicially ensured that a clear separation between security and civilian functions is a non-negotiable constitutional requirement.

As emphasized in academic criticism, although the Constitutional Court Decision No. 114/2025 resulted in a clear prohibition, the Court was deemed to have failed in using a historical-teleological interpretation to explicitly place Article 28 of the 1945 Constitution of the Republic of Indonesia as the basis for doctrinally confirming the civil status of the Indonesian National Police.

This critical view argues that the Constitutional Court should have explicitly stated that because the Indonesian National Police (Polri) is a civilian institution (based on Gus Dur's reforms and the MPR Decree VII/2000), restrictions on the rights of its members (the obligation to resign/retire) are an absolute consequence of the demand for civilian supremacy. This failure leaves room for debate, as expressed by several experts who argue that the Constitutional Court merely invalidated the phrase, and that active Polri members can still fill "strong slice" positions (BNN, BNPT) as long as they comply with the ASN Law.¹² However, this argument contradicts the spirit of reform. If active police personnel—with all their loyalty and command discipline—occupy state positions (political positions), this still violates the principle of functional differentiation, regardless of whether the positions have technical overlap or not.

Ethically, a police officer is not fit to hold a government position, as it falls outside his or her competence as a police officer and he or she lacks further competence in government administration. Therefore, the Ministry of Home Affairs, citing security reasons, should not directly appoint a police officer as acting governor. The police can continue to collaborate with relevant regional authorities or other more competent acting governors, so they can maintain regional security and stability as appropriate.

This Constitutional Court ruling is final and binding and has immediate effect. This means that all assignments of active police officers currently serving outside the police force lose their legal basis.⁵⁹

⁵⁸ Dian Ayu Widya Ningrum, Al Khanif, and Antikowati. Format Ideal Tindak Lanjut Putusan Mahkamah Konstitusi untuk Mengefektifkan Asas Erga Omnes. *Jurnal Konstitusi*, Vol.19, No.2 (2022), p.314-358. <https://doi.org/10.31078/jk1924>.

⁵⁹ Azhari Azhari, Erham Erham, and Hajairin Hajairin. Sifat Final dan Mengikat Putusan Mahkamah Konstitusi Dalam Pemberhentian Presiden dan/atau Wakil Presiden di Indonesia Perspektif Kepastian Hukum. *Jurnal Ilmu Hukum, Humaniora dan Politik*, Vol.6, No.4 (2026). <https://doi.org/10.38035/jihhp.v6i4.8435>.

The implementation of Constitutional Court Decision No. 114/2025 poses a pressing challenge for the Executive, particularly in technical institutions such as the National Narcotics Agency (BNN), the National Counterterrorism Agency (BNPT), and the Corruption Eradication Commission (KPK), which rely on the investigative expertise of the Indonesian National Police (Polri). Active officials in these institutions are now required to choose between permanently resigning (changing status to professional law enforcement officers) or returning to the Indonesian National Police (Polri). This functional dilemma is a trade-off recognized by the Constitutional Court; in Indonesia's post-reform legal system, constitutional certainty and preventing dual functions must be prioritized over the short-term operational efficiency of technical institutions.⁶⁰

The Constitutional Court interpreted Article 28 paragraph (3) of the Republic of Indonesia State Police Law that members of the Republic of Indonesia State Police who will hold positions outside the police are obliged to resign or enter retirement. This interpretation relies on the sound of the norm which is considered to be firm or *expressis verbis*, so it does not need to be expanded through explanations that open up space for active assignments. Doctrinal criticism sees that the Constitutional Court should not stop at textual readings, but should also interpret Article 28 of the 1945 Constitution of the Republic of Indonesia *mutatis mutandis* to affirm the right to legal certainty and equal treatment in institutional positions. The implication of this difference is the strengthening of the principle of legal certainty or *lex certa*, because the status of an active member must not be left in a blurred interpretation space between remaining a member of the police and simultaneously holding a civil position.

From the aspect of active member status, the majority view of the Constitutional Court confirms the prohibition on active members of the Republic of Indonesia National Police from holding state positions or political positions, so that this decision functions as a constitutional bulwark to separate police functions from the civil bureaucracy. However, the Constitutional Court has not yet firmly positioned the Indonesian National Police as a civilian institution that is completely separate from the militaristic legacy of the Indonesian Armed Forces (ABRI). This lack of confirmation has the potential to leave a debate about whether active members can still be placed in certain positions that are considered to have intersectional duties with law enforcement functions. In terms of legal priorities, the majority of the Constitutional Court emphasizes institutional neutrality and legal certainty, while doctrinal criticism emphasizes the importance of consolidating civil supremacy and differentiating functions between institutions.

3.4. Comparative Synthesis and Direction of Legal Reform in Indonesia

Under current Indonesian law, the Police are structurally subordinate to the President, on a par with the Ministries. However, they still have very different functions and duties, and within the paradigm of the police, as civil servants, they also have the function of carrying out certain government functions. The unclear position of the Police in the 1945 Constitution of the Republic of Indonesia has sparked serious opposition among several institutions seeking to have the Police placed under their own jurisdiction. In this regard, the Ministry of Home

⁶⁰ Muhammad Rozien Al Abqary. Tinjauan Yuridis Pengisian Jabatan Sipil oleh Anggota Kepolisian Republik Indonesia Aktif berdasarkan Peraturan Kepolisian Nomor 10 Tahun 2025. *Amnesti: Jurnal Hukum*, Vol.8, No.1 (2026), p.69-77. <https://doi.org/10.37729/amnesti.v8i1.7350>.

Affairs, the Ministry of Law and Human Rights, and the Ministry of Justice are said to want to bring the Police under their jurisdiction.⁶¹

Indonesia's restrictive model, supported by Constitutional Court Decision No. 114/2025, is a uniquely restrictive model, influenced by the historical trauma of the Indonesian Armed Forces' dual function.⁶² This model demands layered restrictions through structural constitutional interpretation. This differs from countries with a high level of Administrative Trust and a focus solely on partisan neutrality (the US) or that allow flexibility of placement within the corridor of constitutional loyalty (Germany).

Given Indonesia's low level of administrative trust in non-partisan professionalism, the risk of politicization of security institutions is considered very high. The Constitutional Court's ruling affirmed institutional neutrality—a strict separation between coercive law enforcement organs and regulatory civil bureaucratic organs. Absolute structural limitations (the obligation to resign) are a constitutional means of ensuring that employment status determines functional boundaries and prevents role confusion.

The Constitutional Court's ruling effectively established a Constitutional Firewall separating the Indonesian National Police (Polri) from the civilian bureaucracy.⁶³ This firewall serves two primary purposes: first, to protect the civilian bureaucracy from the coercive and militaristic influence of the Indonesian National Police (such as the dual function of the Indonesian National Armed Forces), and second, to protect the Indonesian National Police from politicization within civilian institutions. Doctrinally, this forces Polri personnel to refocus on their core function (state security) and away from Goal Attainment (government bureaucracy/political positions).

Eliminating the assignment loophole ensures that Polri specialist expertise can only be contributed to civilian state institutions if the personnel have fully transitioned to civilian civil servant status, removing themselves from the active police chain of command. This is a fundamental step towards consolidating post-reform civilian governance.

To follow up on the decision of the Constitutional Court and end the debate regarding the employment status of active National Police members who hold positions outside the police, fast, firm and comprehensive legislative and executive steps are needed. Synchronization of regulations needs to be carried out between the National Police Law of the Republic of Indonesia, especially Article 28, Law Number 20 of 2023 concerning State Civil Apparatus, as well as laws that regulate special institutions such as the Corruption Eradication Commission, BNN and BNPT. This synchronization aims to close all legal loopholes that still allow active Polri

⁶¹ Danendra, Ida Bagus Kade. The Position and Function of the Police in the Organizational Structure of the Republic of Indonesia, *Lex Crimen*, Vol.I, No.4 (2012), p.47.

⁶² Hilda Halnum Salsabil and Abdul Aziz Nashiddin. Politik Hukum Penempatan TNI Aktif dalam Jabatan Sipil: Antara Kepentingan Negara dan Supremasi Sipil. *Progresif: Jurnal Hukum*, Vol.19, No.1 (2025), p.1-18. <https://doi.org/10.33019/sf1gaf24>.

⁶³ Jowan and Diki Zukriadi. Militer di Balik Meja Birokrasi: Reformulasi Kewenangan TNI dan Krisis Supremasi Sipil dalam Demokrasi Indonesia. *Jurnal Ilmu Hukum, Humaniora dan Politik*, Vol.5, No.5 (2025), p.4284-4294. <https://doi.org/10.38035/jihhp.v5i5.4772>.

members to be assigned to state or political positions.⁶⁴ The government also needs to strictly regulate certain types of positions that really require special skills in the field of law enforcement. Filling such positions should be carried out through a permanent status transfer mechanism in accordance with civil service law, so that active status as a member of the National Police ends clearly. This status transfer mechanism is different from temporary assignments, because assignments still maintain active police status and can give rise to multiple interpretations. The DPR together with the Government also need to revise Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia by including clear confirmation from the Constitutional Court, especially so that the norms of Article 28 paragraph (3) no longer open up room for different interpretations. This revision is important to emphasize the position of the National Police as a civil institution that is professional, neutral, and separate from the civil and military bureaucracy in carrying out positions outside the police.

The novelty of this research lies in the placement of Constitutional Court Decision Number 114/PUU-XXIII/2025 as the basis for confirming the boundaries of authority between the functions of the Indonesian National Police and post-reform civil positions, especially through reading the obligations of police officers to resign or retire before occupying positions outside the police institution. This study connects constitutional interpretation, separation of powers teachings, Talcott Parsons' social system theory, and legal comparisons with the United States, England, Germany, and France to formulate the need for permanent status transfer for police officers whose expertise is needed in civil institutions. This formulation provides direction for legal reform through harmonization of the Police Law, State Civil Apparatus Law, and related institutional laws so that investigative expertise can still be utilized by the state through employment positions that are clear, professional, and free from political interests.

4. CONCLUSION

Constitutional Court Decision Number 114/PUU-XXIII/2025 reaffirmed the constitutional limitations on active Indonesian National Police officers holding positions outside the police force, specifically by removing the phrase "or not based on assignment from the Chief of National Police" contained in the Elucidation to Article 28 paragraph (3) of the Police Law. This decision strengthens legal certainty by closing the loophole for active assignments that could potentially revive the police's dual function within the civilian bureaucracy. Research findings indicate that police officers intending to hold civilian positions must first resign or retire to prevent the mixing of security and law enforcement functions with government functions. However, this decision requires follow-up through regulatory harmonization to ensure that police expertise can still be utilized within civilian institutions through mechanisms that align with the principles of the rule of law.

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