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Deconstruction of Police Power: A Political-Legal Analysis of Constitutional Court Decision No. 114/PUU-XXIII/2025

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Abstract

This study analyzes the political-legal deconstruction of police power through Constitutional Court Decision No. 114/PUU-XXIII/2025. The background to this study is the resurgence of the dual-function model through the administrative infiltration of the police into civilian positions, legitimized by an ambiguous phrase in the Explanatory Notes to Article 28(3) of Law No. 2/2002. Using a normative legal research method with a legislative and conceptual approach, this study examines how this phrase distorts legal policy and unlawfully expands police power, how the Constitutional Court dismantled this deviant power structure, its impact on civil-security relations and the constitutional rights of citizens, as well as the legal reconstruction following the ruling. The findings indicate that the article's explanatory note constitutes legislative misconduct that enables institutional capture and the erosion of meritocracy. Unlike previous studies by Hasani, Siregar, and Nurmandi, which tended to focus on macro-level reforms of police institutional accountability, this study challenges that literature by specifically demonstrating that Constitutional Court Decision No. 114/PUU-XXIII/2025 serves as an act of judicial resistance. This ruling radically restores a clear constitutional distinction between security and administrative functions of government, protects citizens' right to equal opportunity within the bureaucracy.

Keywords: Deconstruction of Police Power; Constitutional Court; Civil Supremacy; Legislative Violations; Dual Administrative Function

INTRODUCTION

Following the 1998 Reformasi, Indonesia undertook a major restructuring of civil-security relations by separating the Indonesian National Armed Forces and the Indonesian National Police,¹ thereby dismantling the dual-function paradigm that had characterized the New Order era.² Philosophically, such separation reflects the constitutional commitment to preventing the concentration of coercive power within civilian governance institutions. Juridically, Article 30 paragraph (4) the 1945 Constitution of the Republic of Indonesia limits the constitutional mandate of the Indonesian National Police to maintaining public security and order, enforcing the law, and providing protection and services to society. Sociologically, however, the continued placement of active police officers in civilian bureaucratic positions has generated significant debate concerning the erosion of civilian supremacy, bureaucratic neutrality, and democratic accountability. To address this structural tension, this study explicitly identifies overlapping and ambiguous norms within the current statutory

framework. Specifically, it explains the normative conflict involving Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia and the body text of Article 28 paragraph (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia which demand strict functional boundaries and resignation vs. the ambiguous, permissive loophole embedded within the elucidation of Article 28 paragraph (3) of the Police Law itself.

Previous studies have extensively examined police reform, civilian policing, and democratic governance in Indonesia, *first*; Ismail Hasani, Halili, and Ikhsan Yosarie analyzed police transformation within the framework of constitutional democracy and emphasized the necessity of strengthening democratic oversight over police institutions,³ *second*; Sarah Nuraini Siregar discussed the development of civilian policing within the context of police reform and human rights protection,⁴ *third*; while Nurmandi and his colleagues examined institutional reform of the Indonesian National Police through the perspective of

¹ Yusuf Warsyim, 'Peran Komisi Kepolisian Nasional Dalam Penegakan Kode Etik Kepolisian Negara Republik Indonesia', *Fundamental: Jurnal Ilmiah Hukum* 12, no. 1 (May 2023): 137, <https://doi.org/10.34304/jf.v12i1.108>.

² Ismail Hasani, Halili, and Ikhsan Yosarie, 'Police Transformation within Constitutional Democracy Design: Evidence from Indonesia', *Jurnal Civics: Media Kajian Kewarganegaraan* 23, no. 1 (April 2026): 340, <https://doi.org/10.21831/jc.v23i1.96514>.

³ Ikhsan Yosarie et al., *Desain Transformasi Polri Untuk Mendukung Visi Indonesia 20245* (Jakarta: Pustaka Masyarakat Setara, 2024), 56.

⁴ Sarah Nuraini Siregar, 'Polisi Sipil Dalam Reformasi Polri : Upaya & Dilema Antara Penegakan HAM Dan Fungsi Kepolisian', *Jurnal Penelitian Politik* 14, no. 2 (December 2017): 146, <https://ejournal.brin.go.id/jpp/article/view/10789>.

new institutionalism;⁵ *fourth*; Meanwhile, Akbar M. F. reviewed police reform in Indonesia from a historical and structural perspective, highlighting the persistent challenges of accountability and civilian oversight.⁶ Nevertheless, those studies primarily focus on institutional reform, accountability, and democratic policing without specifically analyzing Constitutional Court Decision No. 114/PUU-XXIII/2025 as a constitutional mechanism for resisting the expansion of police power into civilian bureaucracy. Furthermore, while recent post-2025 publications have begun to widely discuss Constitutional Court Decision No. 114/PUU-XXIII/2025, those existing articles predominantly rely on standard normative legal dogmatics, merely evaluating the formal binding force of the decision or the technicalities of judicial review. This study offers a critical point of departure from that burgeoning literature by shifting the paradigm from a simple case commentary to a deeper structural critique. Therefore, the novelty of this research lies in its advanced political-legal analysis of the Constitutional Court's decision, which moves beyond mere dogmatic descriptions to rigorously apply a distinct conceptual framework of legislative

misconduct, institutional penetration, administrative occupation, role contamination, and de-security governance in reconstructing civilian supremacy within Indonesia's evolving post-decision constitutional system.

The urgency of this research arises from the increasing expansion of security institutions into civilian governance structures, which potentially threatens constitutional democracy and the principle of civilian supremacy. The placement of active police officers in strategic civilian positions has generated concerns regarding bureaucratic meritocracy, equal opportunity in public office, and the independence of state administrative institutions. Such practices create structural tensions between the constitutional function of The Indonesian National Police as a security institution and the civilian character of government administration. Furthermore, the existence of legal norms that permit such placements raises concerns regarding the reemergence of dual-function patterns that were formally dismantled during the Reformasi era. Consequently, an examination of Constitutional Court Decision No. 114/PUU-XXIII/2025 becomes crucial to evaluate the

⁵ Achmad Nurmandi et al., 'The Indonesian Police Reform: Police in the Reform Era Based on New Institutionalism Perspective', *Jurnal Studi Pemerintahan* 7, no. 2 (2016): 265, <https://doi.org/10.18196/jgp.2016.0029>.

⁶ Satria Mandala Akbar, 'Integritas Kepolisian Daerah Bengkulu Dalam Pengawasan Pemilihan Kepala Daerah Perspektif Fiqh Siyasah (Studi Kasus Pada Polisi Daerah Bengkulu)' (UIN Fatmawati Sukarno Bengkulu, 2023), <https://repository.uinfasbengkulu.ac.id/2690/>.

13 constitutional boundaries of police authority within a democratic state.⁷

This research addresses four principal legal issues formulated as structural descriptions: first, the mechanism by which the Elucidation of Article 28 paragraph (3) of Law No. 2 of 2002 concerning the Indonesian National Police of the Republic of Indonesia legally facilitated the institutional expansion of police power into the civilian bureaucracy; second, the constitutional function of Constitutional Court Decision No. 114/PUU-XXIII/2025 as a judicial mechanism to resist the overreach of police authority beyond its constitutional mandate; third, the multi-dimensional political-legal impacts generated by the decision on the state bureaucratic structure, civil service meritocracy, and citizens' constitutional rights; and fourth, the strategic reconstruction of police legal politics required post-adjudication to fortify civilian supremacy and democratic constitutionalism.⁸

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13 This study employs normative legal research using statutory, conceptual, historical, and case approaches.⁹ Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia and of Law No. 2 of 2002 on the National Police

of the Republic of Indonesia, Law No. 20 of 2023 concerning the State Civil Apparatus, Constitutional Court Decision No. 114/PUU-XXIII/2025, and other relevant legislative instruments. Secondary legal materials include books, scholarly journals, legal doctrines, and academic studies discussing constitutional law, legal politics, police reform, civilian supremacy, and democratic governance. The collected legal materials are analysed qualitatively through legal reasoning and political-legal interpretation to construct a comprehensive understanding of the constitutional implications of police involvement in civilian administration.

This research aims to analyse the constitutional and political-legal implications of Constitutional Court Decision No. 114/PUU-XXIII/2025 concerning the placement of active police officers in civilian positions. It seeks to examine the legislative deviation underlying the disputed norm, evaluate the decision's impact on civilian supremacy and bureaucratic meritocracy, and formulate a reconstruction of police legal politics that aligns with the constitutional principles of democratic governance, limitation of power, and the rule of law. Furthermore, this research aims to develop a

⁷ Yogeta Yogeta and Suwari Akhmaddhian, 'Analisis Kritis Terhadap Putusan Mahkamah Konstitusi Atas Pengujian Materiil Undang-Undang Tentang Kepolisian', *Logika: Jurnal Penelitian Universitas Kuningan* 16, no. 02 (2025): 220, <https://journal.uniku.ac.id/index.php/logika/article/view/3357/5078>.

⁸ Ramadhan Usman et al., 'Reaktualisasi Supremasi Sipil Dalam Tata Negara Indonesia Melalui Pembatasan Penempatan Polisi Aktif Pada Jabatan Sipil', *QOSIM: Jurnal Pendidikan Sosial & Humaniora* 4, no. 4 (July 2026): 1245, <https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/qosim/article/view/9630>.

⁹ Syafliansah, *Metode Penelitian Hukum* (Jakarta: Zahir Publishing, 2025), 20.

political-legal framework for understanding the expansion of security power within civilian institutions and the constitutional mechanisms required to prevent its recurrence.

RESULT AND DISCUSSION

Measures for Expanding Police Authority based on Article 28, Paragraph (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia

The elucidation of an article within a statute is doctrinally intended as an interpretative device that assists in comprehending the intent of the legislature regarding the norms contained in the body of the law. As stipulated in Article 64 of Law No. 13 of 2022 concerning the Formation of Legislation, the elucidation possesses a limited function, namely, to provide technical clarification, not to create additional norms.¹⁰ The elucidation must not broaden the scope, formulate new norms, or alter the meaning of existing provisions. The position of the elucidation is not a locus for norm creation, but rather merely a medium for grammatical interpretation of norms that have been definitively formulated in the body of the statute.

However, in its realization, the elucidation to Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia has precisely exceeded that boundary and transformed into a political instrument that facilitates the institutional expansion of police power into the civilian bureaucracy. The Constitutional Court, in its legal reasoning for Decision No. 114/PUU-XXIII/2025, affirmed that an elucidation that expands the norm of the body text constitutes a deviation from the principle of legal certainty guaranteed under Article 28 D (1) of the 1945 Constitution of the Republic of Indonesia.¹¹

When the elucidation of an article is crafted as a political tool rather than an instrument of legal interpretation, a fundamental shift occurs in the relationship between law and power. The elucidation to Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, containing the phrase "or are not based on an assignment from the National Police Chief," constitutes a form of distortion that is, in substance, not merely an interpretation, but the creation of an additional norm that is not found at all in the text of that article.

¹⁰ Bayu Dwi Anggono and Rofi Wahanisa, 'Corruption Prevention in Legislative Drafting in Indonesia', *WSEAS Transactions on Environment and Development* 18 (2022): 170, <https://doi.org/10.37394/232015.2022.18.19>.

¹¹ Mimi Kartika, 'Active Police Officers Still Holding Civilian Posts, Police Law Challenged at the Court', Constitutional Court of the Republik Indonesia, En.Mkri.Id, 4 March 2026, https://en.mkri.id/news/details/2026-03-04/Active_Police_Officers_Still_Holding_Civilian_Posts,_Police_Law_Challenged_at_the_Court.

The body of Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia explicitly states that "Members of the Indonesian National Police may occupy positions outside the police after resigning or retiring from police service". This norm bears a limitative and exclusionary character, requiring the severance of the structural and hierarchical relationship between The Indonesian National Police members and the institution before assuming positions outside the police. However, with the inclusion of the elucidatory phrase "or are not based on an assignment from the National Police Chief," the limitative meaning mutates into one that is permissive, adaptive, and expansive, enabling an individual to remain an active The Indonesian National Police member while simultaneously occupying a civilian position.¹² It is at this juncture that the elucidation becomes a deliberate political instrument to dismantle the normative order without formally amending the statute.¹³

The regulatory strategy inserted through the elucidation constitutes a political measure structurally aimed at preserving, and even expanding, the influence of the security institution within the government

bureaucracy. The legislature (in this case the House of Representative and the President) not only failed to ensure the consistency of the elucidation with the body of the article but instead permitted, or even facilitated, the deviation as an instrument to maintain power relations between the executive and the police. This failure forms part of a political design to maintain executive control access through security apparatus personnel over strategic positions within the civilian government structure.¹⁴ Such deviation is a consequence of the post-New Order state's persistent difficulty in releasing its dependency on security apparatus personnel in managing civilian institutions, so that the need for administrative control is translated into legislative mechanisms permissive of a dual role for the police. The provision under review has been argued to substantively create a "dual function" of the police, as it allows the police to act not only in maintaining state security but also in governance, bureaucracy, and social life a condition that creates structural discrimination against civilians and undermines the merit system in public administration.¹⁵

¹² Kiki Firmantoro, 'The Binding Effect of Constitutional Court Decisions on Police Regulations (An Analysis of Constitutional Court Decision No. 114/PUU-XXIII/2025)', *Iblam Law Review* 6, no. 1 (January 2026): 7, <https://doi.org/10.52249/ilr.v6i1.658>.

¹³ Muhamad Pelengkahu, 'Corruptio Legis in Indonesian Legal Politics: A Legisprudential Analytical Approach', *Corruptio* 6, no. 2 (2025): 73, <https://doi.org/10.25041/corruptio.v6i2.4450>.

¹⁴ Hasani, Halili, and Yosarie, 'Police Transformation within Constitutional Democracy Design', 332.

¹⁵ Sri Pujianti, 'Hearing on Police Within Civil Service Continues', *Constitutional Court of the Republik Indonesia*, En.Mkri.Id, Jakarta: Constitutional Court of the Republik Indonesia, 15 September 2025, https://en.mkri.id/news/details/2025-09-15/Hearing_on_Police_Within_Civil_Service_Continues.

The phrase "or are not based on an assignment from the National Police Chief" serves as a gap for institutional penetration that enables the police institution to breach its jurisdictional boundaries and enter the sphere of civil administration. The appointment of active-duty members of the Indonesian National Police to strategic civilian positions, such as Secretary General of a ministry, Head of the National Narcotics Agency, Deputy Head of the State Cyber and Crypto Agency, Head of the National Counter Terrorism Agency a practice made possible solely by the legitimization derived from the elucidation.¹⁶ This phrase may be read as a legal acknowledgment for active The Indonesian National Police members to exercise administrative functions, even though Article 30 (4) of the 1945 Constitution of the Republic of Indonesia explicitly affirms The Indonesian National Police as a state instrument tasked with maintaining public security and order, not with managing government administration. In other words, the elucidatory phrase operates as a legal justification for police power expansion that is constitutionally impermissible. The Indonesian Supreme Court has consistently

held that subordinate legislation, including elucidations, cannot contradict or expand upon the parent statute, a principle reaffirmed by the Constitutional Court in its 2025 decision.¹⁷

The political acquiescence of the legislature toward the existence of the phrase constitutes a failure to safeguard the integrity of legislation. The House of Representative and the President, as the two authorities responsible for the enactment of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, failed to exercise their constitutional oversight function over the quality of norms, even though Article 7 (1) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia clearly stipulates that the substance of an elucidation must not contradict the body of the statute. This acquiescence opens two possibilities; first, there was a deliberative error in the legislative process, in that the legislators did not comprehend the normative implications of the phrase. Second, and more politically probable, the acquiescence was deliberate to perpetuate the Indonesian National Police's institutional access to civilian positions.¹⁸ Political acquiescence of this nature

¹⁶ Edi Sahputra Hasibuan, 'Polemic on Polri Reform: Where Do You Want the Police To Be Directed?', *KRTHA BHAYANGKARA* 19, no. 3 (December 2025): 843, <https://doi.org/10.31599/krtha.v19i3.4670>.

¹⁷ Yogeta and Akhmaddhian, 'Analisis Kritis Terhadap Putusan Mahkamah Konstitusi Atas Pengujian Materiil Undang-Undang Tentang Kepolisian', 207.

¹⁸ News Desk, 'Indonesia Constitutional Court Bans Police from Holding Second Job', *The Star*, 13 November 2025, <https://www.thestar.com.my/aseanplus/aseanplus-news/2025/11/13/indonesia-constitutional-court-bans-police-from-holding-second-job>.

demonstrates that legislative deviation occurs due to a political intention to maintain flexibility of power.

In legislative theory, an elucidation should not add to or alter a norm; however, in this case, it weakens the prohibition contained in the main provision, creating what scholars have described as a form of legislative misconduct where the explanatory memorandum contradicts the very provision it purports to elucidate. This deviation directly undermines the principle of the hierarchy of laws and regulations, as an interpretative text is weaponized to subvert the primary statutory norm, thereby disrupting the mandatory harmonization required between superior constitutional mandates and subordinate legislation.

The legal uncertainty born from the elucidation constitutes a deliberate political design. When norms are drafted ambiguously, loosely, and in multilayered interpretations, the space for executive discretion and police institutional discretion expands further. This pattern of uncertain norm formulation directly contravenes Article 28D (1) of the 1945 Constitution of the Republic of Indonesia,¹⁹ which guarantees every person the right to legal protection and fair legal certainty. Such norms cannot be viewed as mere redactional defects, but rather

as a political mechanism to blur the boundary between security functions and administrative functions in order to secure institutional advantage. The inconsistency between the body of Article 28 (3) of the 1945 Constitution of the Republic of Indonesia and its elucidation led to a motion for judicial review that the Constitutional Court granted, on the grounds that the relevant article created legal uncertainty, a violation of Article 28D (1) of the 1945 Constitution of the Republic of Indonesia.²⁰

The conflict between positive law and the 1998 Reformasi agenda becomes increasingly apparent in the context of placing active the Indonesian National Police members in civilian positions. The Reformasi agenda affirmed the separation of the roles of the Indonesian National Armed Forces and the Indonesian National Police as stipulated in the People's Consultative Assembly Decree No. VII/MPR/2000, which designates the Indonesian National Armed Forces as a defence instrument and the Indonesian National Police as a security instrument. This doctrine of separation represents an effort to terminate the military's dual function and to construct civilian supremacy within a democratic state.

The elucidation to the article in of Law No. 2 of 2002 on the National Police of the

¹⁹ Triya Indra Rahmawan and Moh Fahrial Amrullah, 'Legal Validity and Efficacy in the Legislative Process in Indonesia', *Jurnal Penelitian* 22, no. 1 (September 2025): 60, <https://doi.org/10.26905/jp.v22i1.15999>.

²⁰ Rahmawan and Amrullah, 60.

Republic of Indonesia creates space for the reconnection of security and administrative roles, thereby resurrecting the dual-function pattern in a softer form. If the Indonesian National Armed Forces dual function during the New Order era was repressive and coercive in nature, the Indonesian National Police's current dual function operates administratively through the occupation of civilian positions. This reveals a political-legal regression, whereby the authoritarian legacy reemerges indirectly through deviant regulatory loopholes.

The placement of active the Indonesian National Police members in civilian positions constitutes the reproduction of dual function in a modern administrative version. When the security apparatus is no longer limited to law enforcement and the maintenance of order, but also exercises administrative functions in ministries, state institutions, and non-ministerial government bodies, a structural shift occurs in the architecture of governance. The security apparatus becomes part of the policymaking process, budget management, and bureaucratic control,²¹ even though all three functions constitute the core of civilian government.

Civilian positions should be managed by the state civil apparatus based on the principle of meritocracy as mandated by

Article 28D (3) of the 1945 Constitution of the Republic of Indonesia. When such positions are filled by active security apparatus personnel, a seizure of civilian space by security logic occurs, resulting in the subordination of the bureaucracy to the police institution. Indonesia's new of Law No. 20 of 2023, which permits active military and police personnel to occupy civilian roles, risks resurrecting the dual role of the past, bringing the security apparatus back into government and threatening to undermine Indonesia's democratic progress.

The practice of placing active the Indonesian National Police members in civilian positions has been legitimized through the elucidation to Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, such that it is unsurprising that thousands of the Indonesian National Police members work beyond their primary function. Data indicates that at least 4,351 active the Indonesian National Police members occupy various positions outside the police institution. The low level of political resistance to this practice demonstrates that the state institutionally permits police power expansion as part of post-reform political dynamics. This phenomenon threatens the foundations of the rule of law, because civilian positions that

²¹ Genta Dwi Pebriawan et al., 'Birokrasi Sipil Dan Militer: Dominasi Aktor Militer Dalam Tubuh Kementerian Pertahanan Republik Indonesia', *Jurnal Ilmu Sosial Dan Ilmu Politik* 3, no. 2 (December 2023): 5, <https://doi.org/10.30742/juispol.v3i2.3481>.

should be managed based on the principle of civilian supremacy are instead dominated by security apparatus personnel. It is in this regard that Constitutional Court Decision No. 114/PUU-XXIII/2025 plays a role as a mechanism of institutional correction.

The Constitutional Court affirmed that an elucidation that expands the norm of the body text constitutes a form of legislative deviation and contravenes the 1945 Constitution of the Republic of Indonesia, asserting the need for institutional separation and legal clarity.²² This decision is not merely a legal interpretation but a political-constitutional action to halt the infiltration of police power into the civilian bureaucracy. By declaring that the phrase "or are not based on an assignment from the National Police Chief" has no binding legal force, the Constitutional Court has restored the norm to its constitutional limits, while simultaneously closing the space for institutional penetration that had been legalized through the elucidation.

Constitutional Court Decision No. 114/PUU-XXIII/2025 has dismantled the political-legal construction that had been facilitating the expansion of police power. The Constitutional Court affirmed that

normative ambiguity is not a technical imperfection but a threat to legal certainty and the principle of the rule of law. The Court's ruling, delivered in November 2025, requires active police officers to resign before taking any civilian position, thereby rejecting reports of thousands of officers serving in civilian managerial roles as a deviation from constitutional principles on civilian oversight.²³ Consequently, this decision endeavors to restore the integrity of the state administration system. The decision may be read as an effort to restore the post-1998 Reformasi institutional design, to maintain the separation of Indonesian National Armed Forces and The Indonesian National Police functions, and to uphold civilian supremacy as a fundamental principle of constitutional democracy.

As a reconstruction of the architecture of power, Constitutional Court Decision No. 114/PUU-XXIII/2025 opens a space for reflection that the rule of law must not become an instrument for legitimizing the expansion of security apparatus power. The state must comprehensively revise Law No. 2 of 2002 on the National Police of the Republic of Indonesia to align it with the 1945 Constitution of the Republic of

²² Ismarini Della Purnama Della, Novaranty Zura Dwiputri, and Irwan Triadi, 'Supremasi Sipil Atas Militer Pasca-2024: Membaca Resistensi Institusional Dalam Politik Hukum Indonesia', *Jurnal Hukum Legalita* 7, no. 2 (December 2025): 255, <https://doi.org/10.47637/legalita.v7i2.1947>.

²³ Bagus Ahmad Rizaldi and Cindi Frishanti Octavia, 'Minister Says Police in Civilian Posts Need Not Resign after Ruling', Antara News, 18 November 2025, <https://en.antaranews.com/news/392449/minister-says-police-in-civilian-posts-need-not-resign-after-ruling>.

Indonesia, strictly limit the Indonesian National Police's authority to the security domain, and return all civilian positions to the State Civil Apparatus as a manifestation of the restoration of equality and meritocracy. Without subsequent regulatory action, the Constitutional Court's decision will merely become a normative correction unaccompanied by structural change. Therefore, Constitutional Court Decision No. 114/PUU-XXIII/2025 must be understood as a constitutional declaration that the state must not tolerate normative loopholes that enable security institutions to dominate the sphere of civil administration. the Indonesian National Police regulation decreed in December 2025 was criticized by constitutional law experts as disobeying the Constitutional Court's decision, highlighting the ongoing institutional disregard for constitutional rulings and the need for robust legislative compliance mechanisms.²⁴

Judicial Resistance against the Smuggling of Security Power

The Constitutional Court, in Decision No. 114/PUU-XXIII/2025, demonstrated its capacity as the guardian of civilian supremacy, a constitutional function implicitly inherent in the authority to review laws against the Constitution as provided for in Article 24C (1) of the 1945 Constitution of the Republic of Indonesia.

This role is not merely legal-formal in nature but represents a constitutional position bearing a historical and political responsibility to ensure that state institutions do not exceed the functional boundaries established by the Constitution.

When the Court invalidated the phrase "or are not based on an assignment from the National Police Chief" in the elucidation to Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, the action was not only a correction of normative ambiguity but a form of judicial resistance against the penetration of security power into the domain of civilian governance. In other words, the Court was not merely interpreting norms but exercising its constitutional function to ensure that civilian supremacy which has constituted the foundation of the state's post-Reformasi legal politics is not compromised by deviant legislative design. The Court held that the elucidation of Article 28 (3) creates a loophole that allows active police officers to occupy civilian positions, in contradiction with the principle of equality before the law and the constitutional guarantee of equal opportunity in government.

This decision, in its substantive form, corrects what may be academically categorized as legislative misconduct namely, the act of the legislature in formulating an

²⁴ Najla Nur Fauziyah, 'Institutional Disregard for Constitutional Court Rulings', Tempo English, 18 December 2025, <https://en.tempo.co/read/2074542/institutional-disregard-for-constitutional-court-rulings>.

elucidation inconsistently with the body of the article, thereby creating new norms that unlawfully expand the domain of police authority. When the Court declared that the elucidation deviated from the provisions of Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, the Court was in effect stating that the legislature had exceeded the limits of its legitimate legislative function. The Court's legal reasoning explicitly acknowledged that the norm in Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, imperative, and leaves no room for interpretation, and that a statutory norm using the phrase "after resigning or retiring" constitutes a mandatory constitutional requirement, not a matter of policy discretion. However, the elucidation precisely created new norms that provided exceptions to those requirements. Within the framework of the hierarchy of norms, an elucidation cannot supersede the body of the article, as affirmed by Article 64 (3) of the Law on the Formation of Legislation, which states that an elucidation must not expand norms. Thus, the Court positioned itself as a corrector of legislative deviation, rather than as an actor merely resolving a constitutional dispute. In legislative theory, an elucidation should not add to or alter a norm; however, in this case, it weakens the prohibition contained in the main provision of Article 28 (3) of Law No. 2 of 2002 on the National Police of the

Republic of Indonesia, a practice that has been criticized as corruption legis in Indonesian legal politics.

In the construction of the post-1998 Reformasi state, People's Consultative Assembly Decree No. VII/MPR/2000 concerning the Role of the Indonesian National Armed Forces and the Role of The Indonesian National Police served as a crucial political-legal foundation for restructuring the relationship between civilians and security apparatus personnel. Although this decree was revoked through the People's Consultative Assembly Decree No. I/MPR/2003, the Court has consistently positioned it as a political-legal document reflecting the intent of Reformasi. This is evident in how the Court reinterpreted the separation of the People's Consultative Assembly and the Indonesian National Police functions in this decision. The People's Consultative Assembly Decree VII/2000 affirmed that the Indonesian National Police is tasked with matters of public security and order, while the role of government administration and civilian positions falls under civilian authority. The Court reread the People's Consultative Assembly Decree as an interpretive guide for understanding the Indonesian National Police's role within the framework of the rule of law, such that the invalidation of the elucidation forms part of an effort to restore the direction of legal politics that had been perverted. Accordingly,

the Court affirmed that norms that expand the Indonesian National Police's authority not only conflict with the statutory text but also with the ideological structure of the state built in the post-Reformasi era.

Viewed from the perspective of constitutional theory, the Court's action in this decision is not merely a form of judicial review but has transformed into an act of constitutional defence namely,²⁵ the Court's endeavor to defend the fundamental principles of the rule of law when the legislative and executive branches fail to exercise self-control. It is in this context that the Court plays a role akin to the counter-majoritarian doctrine propounded by Alexander Bickel: the Court becomes the bastion of the Constitution when majority political mechanisms fail to protect constitutional principles. Legislation that permits active the Indonesian National Police members to occupy civilian positions constitutes a form of political failure that can only be corrected through judicial intervention. Without the assertive constitutionalism exercised by the Court in this decision, the legislative loophole would continue to serve as a gateway for ambiguity of the police role that threatens the structure of democratic governance. As Bickel

famously argued, judicial review is a deviant institution in American democracy because it permits the judiciary to override the will of the majority, yet it remains essential precisely when the political process fails to adhere to constitutional principles.²⁶

The principal contribution of this decision lies in the consolidation of the boundaries of the Indonesian National Police's function within the dichotomous framework of "state security vs. civil governance." Within the framework of the modern constitution, the security function and the civil governance function must be strictly separated to prevent the concentration of power. Article 30 (4) of the 1945 Constitution has explicitly stipulated that the Indonesian National Police is a state instrument tasked with maintaining public security and order and with protecting, sheltering, and serving the community. Not a single norm in the 1945 Constitution of the Republic of Indonesia confers a mandate upon the Indonesian National Police to exercise governmental administrative functions. Therefore, when active the Indonesian National Police members occupy civilian positions, a structural conflict arises between the constitutional meaning of the Indonesian National Police and empirical practices

²⁵ M. Fadly Hasibuan and Iza Rumesten, 'Reorientasi Kewenangan Judicial Review Di Mahkamah Konstitusi Berdasarkan Prinsip Supremasi Konstitusi', *Ekspose: Jurnal Penelitian Hukum dan Pendidikan* 22, no. 2 (December 2023): 44, <https://doi.org/10.30863/ekspose.v22i2.2713>.

²⁶ Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Amerika Serikat: Yale University Press, 1986), 62.

within the state bureaucracy. Constitutional Court Decision No. 114/PUU-XXIII/2025 restores that boundary, eliminating the ambiguity that had been exploited for years to expand the security role into the administrative realm. This decision, by reason of the foregoing, not only upholds the law but restores functional differentiation as a fundamental principle of modern state theory.

The Court, in the said decision, also clearly dismantled the structure of the Indonesian National Police's overpowering that had for years been legalized through the elucidation. The Indonesian National Police, as a security institution, possesses a hierarchical and command character that is inherently different from the civilian bureaucracy, which operates based on the principles of meritocracy, professionalism, and public accountability as regulated in Law No. 5 of 2014 concerning the State Civil Apparatus.

Institutional barriers to merit-based career development in police organizations, including rigid bureaucratic hierarchies and cultures of patronage, have been identified as dominant obstacles to professionalization, reinforcing the incompatibility between command-based security structures and merit-based civilian administration.²⁷ Afforded by the elucidation to Article 28 (3)

of Law No. 2 of 2002 on the National Police of the Republic of Indonesia historically enabled active members of the Indonesian National Police to occupy civilian bureaucratic positions, thereby rendering the civilian administrative apparatus subordinate to the security institution. The Constitutional Court, in Decision No. 114/PUU-XXIII/2025, characterized this practice not as a mere administrative irregularity, but as a structural threat to democratic oversight, insofar as civilian officials of police origin retain institutional loyalty to the Indonesian National Police rather than to the principles of civilian governance. The annulment of the elucidation thus constitutes a judicial declaration that the rule of law functions as an instrument of restraint, rather than expansion, of security apparatus power. The Court's decision reaffirms that the Indonesian National Police must not operate as an administrative actor in state management but must return to its constitutional mandate under Article 30 (4) of the 1945 Constitution of the Republic of Indonesia as the guardian of public security and order.

The political-legal ramifications are profound: the protracted infiltration of active police personnel into governmental administrative functions has produced structural distortion and institutional

²⁷ Jayadi, Adriza, and Yuni Pratikno, 'Pengaruh Pengembangan Karir Dan Pelatihan Terhadap Kinerja Personil Di Lingkungan Resimen I Pasukan Pelopor Kedung Halang', *Economic Reviews Journal* 4, no. 4 (October 2025): 1455, <https://doi.org/10.56709/mrj.v4i4.865>.

occupation, effectively contracting the meritocratic space for the State Civil Apparatus and civilian citizens the rightful subjects of public administration. This phenomenon directly implicates the constitutional guarantee of equal opportunity enshrined in Article 28D (3) of the 1945 Constitution of the Republic of Indonesia. Critically, despite the issuance of Decision No. 114/PUU-XXIII/2025, the Petitioners in the judicial review have contended that active police officers continue to hold civilian posts, attributable to widespread divergent interpretations of the annulled elucidation, resulting in persistent structural discrimination against civilian aspirants and undermining the material realization of the rule of law as a limitation on arbitrary power.

Political-Legal Impact on Bureaucratic Structure and Citizens' Constitutional Rights

The Constitutional Court, in a related hearing, emphasized that the merit system constitutes the administration of the State Civil Apparatus system in accordance with the principle of meritocracy, namely an organizational political system in which authority and positions are granted based on an individual's ability, achievements, and performance, rather than on wealth, social class, or family background.²⁸ Police

infiltration not only reduces the opportunities of the State Civil Apparatus to lawfully advance in rank but also closes off opportunities for civilian citizens to fill certain structural positions that are legally the right of all citizens. Accordingly, the practice creates administrative inequality political-legal imbalance that renders the police institution the dominant actor in the process of filling public positions. When meritocracy, which should constitute the pillar of bureaucratic professionalism, is replaced by institutional assignment from the security apparatus, the state transforms from a civil service state into a security-administered state.

The distortion of civil-security relations born from the practice far exceeds the individual issue of official competence. It creates a fundamental transformation in the structure of government bureaucracy. A bureaucracy that should be an administrative organ subject to civilian norms and the logic of professionalism transforms into a bureaucratic entity intersecting with the police command structure. This transformation produces tension between the principle of civilian control of government and the pattern of security dominance that contradicts the constitutional design of the rule of law.

²⁸ Achmad Zuhdi and Ari Ade Kamula, 'Legitimasi Hukum Asing Sebagai Pertimbangan Putusan oleh Mahkamah Konstitusi: Perbandingan Antara Indonesia dan Afrika Selatan', *Yurispruden* 7, no. 2 (June 2024): 272, <https://doi.org/10.33474/yur.v7i2.21634>.

The Indonesian National Police, which should exercise duties as regulated in Article 30 (4) of the 1945 Constitution of the Republic of Indonesia namely maintaining public security and order exceeds its role, entering the administrative sphere and exercising public decision-making functions. In other words, the state is experiencing the phenomenon of role contamination, that is, a collision of roles between the security function and the civil administrative function. This poses a serious risk of the loss of democratic accountability, because officials originating from the police command structure are not subject to civilian bureaucratic evaluation mechanisms based on merit and transparency.

The placement of active the Indonesian National Police members as occupants of civilian positions creates the phenomenon of administrative occupation, namely the structural dominance of the security apparatus over the civilian bureaucratic structure. The term is not hyperbolic but rather an empirical reflection of the placement of active police officials in various positions such as ministry secretary-general, ministry inspector-general, head of non-ministerial government institutions, and other strategic positions. This administrative occupation not only reduces the autonomy of the civilian bureaucracy but also shifts the orientation of state administration from public service to a command-based

management model. Such a bureaucratic model is inconsistent with modern governance principles, particularly the principles of open government, transparency, and responsive administration that are hallmarks of a democratic state. The presence of active security apparatus personnel in the civilian structure raises the concern that state administration is being conducted not based on civilian professional standards but on an orientation toward security stability.

Political inequality in access to public positions constitutes a fundamental violation of Article 28D (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that every citizen has the right to equal opportunity in government. When the state structurally opens a bypass lane for the police institution to fill administrative positions without following the same selection procedures as other civilian citizens, the state is creating a privileged class within the bureaucracy. This conflicts with the principle of equality before the law, which constitutes the core of the concept of the rule of law under Article 1 (3) of the 1945 Constitution of the Republic of Indonesia. Accordingly, the infiltration of active the Indonesian National Police members is not merely an administrative violation but a constitutional violation with direct implications for citizens' rights. The Constitutional Court, in Decision No. 114/PUU-XXIII/2025, recognized this constitutional danger and explicitly stated

that the existence of the elucidatory phrase had created legal uncertainty for the State Civil Apparatus and citizens who have the right to access public positions.

By invalidating the elucidatory phrase, the Court in effect reopened the space for fair competition for positions. This decision restores the filling of public positions to the constitutional path based on open competition, meritocracy, and equality of opportunity. The decision not only upholds norms but restores the political-legal rights of citizens that had for years been closed off. The political-legal impact of this decision is the restoration of the principle that public office constitutes a public trust that must be filled by individuals who meet professional qualifications, not by security actors who occupy such positions due to command authority. Consequently, the Constitutional Court's decision is not merely preventive in nature but also restorative: it restores the bureaucratic ecosystem to resume functioning based on civilian logic.

More broadly, Constitutional Court Decision No. 114/PUU-XXIII/2025 constitutes a revitalization of the structure of administrative democracy. This decision reasserts that the state bureaucratic structure must be built upon the principles of functional separation, limitation of power, and civilian

supremacy. Its existence not only corrects legislative deviation but rebuilds the boundaries of power between the security institution and civilian institutions. In the political-legal perspective, this decision demonstrates that the Constitutional Court not only safeguards norms but ensures that the state structure remains aligned with the constitutional philosophy that distinguishes a democratic state from one characterized by administrative authoritarianism.²⁹ Consequently, this decision may be read as a forms of constitutional engineering action by the Court to redesign the structure of civil-security relations to conform to the principles of a democratic rule of law.

By strictly limiting the Indonesian National Police's role, the Constitutional Court sends the message that the state must not transform into a state managed by the security apparatus. This decision reasserts that a democratic state can only function when clarity of jurisdictional boundaries exists between the security institution and the administrative institution. The Constitutional Court's decision, for that reason, is not merely a legal ruling but a political-constitutional action to restore the sovereignty of administration to the civil domain and to restore citizens' constitutional rights to

²⁹ Adi Indrayanto et al., 'A Case Study of Transformational Leadership and Para-Police Performance in Indonesia', *Policing: An International Journal* 37, no. 2 (May 2014): 375, <https://scholar.ub.ac.id/en/publications/a-case-study-of-transformational-leadership-and-para-police-perfo/>.

compete fairly in the filling of public positions.

Post-Decision Reconstruction of Police Legal Politics; Constitutional Court Decision No. 114/PUU-XXIII/2025

Constitutional Court Decision No. 114/PUU-XXIII/2025 opens a new chapter in the legal politics of the Indonesian civil state order. The invalidation of the phrase "or are not based on an assignment from the National Police Chief" in the elucidation to Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia is not merely a corrective action against a defective norm but a constitutional momentum to reformulate the legislative design concerning the police institution within the framework of a democratic rule of law. Through this decision, the Court affirms that the structure of police legal politics must be restored to the fundamental principles of the civil state as provided for in Article 1 (2), Article 1 (3), Article 28D (1), Article 28D (3), and Article 30 (4) of the 1945 Constitution of the Republic of Indonesia. Therefore, the legislature namely, the House of Representatives and the President has a constitutional obligation to comprehensively revise Law No. 2 of 2002 on the National Police of the Republic of Indonesia to bring it

into line with the constitutional limits that have been restored by the Court.

This legislative obligation is immediate and imperative in nature. Article 20 (1) of the 1945 Constitution of the Republic of Indonesia provides that the power to enact laws resides with the House of Representative with the approval of the President. However, such power is not an empty power but one limited by the supremacy of the Constitution and by the Court's decisions, which are final and binding as provided for in Article 24C (1) of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's decision is not merely a source of law but an instrument of legislative direction that must be internalized in the reform of the Police Law. Therefore, the reconstruction of police legislation post-Constitutional Court decision forms part of the legislator's constitutional obligation to enforce a democratic state structure. The legislator no longer has room to preserve the old scheme that permitted the mobility of police actors into civilian positions through an administrative loophole.³⁰

Hitherto, this regulatory framework raises normative issues and creates the potential to cause legal disharmony because legislation provided space for the Indonesian National Police to be "assigned" to civilian

³⁰ Muhamad Dzadit Taqwa, 'Improving Judicial Reasoning in Constitutional Rights Cases: The Case for a Structured Proportionality Test in the Indonesian Constitutional Court', *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 13, no. 1 (April 2026): 13, <https://doi.org/https://doi.org/10.22304/pjih.v13n1.a1>.

positions without relinquishing membership status. This structural overlap challenges the principle of separation of security and civil administrative functions. Therefore, the revision of the Police Law must include provisions that explicitly stipulate that any member of the Indonesian National Police who intends to hold a position outside the Indonesian National Police must permanently resign from the police force.

By establishing the "no concurrent authority" doctrine, legislation ensures that no dualism of loyalty permits security apparatus personnel to exercise administrative functions. This restriction on the Indonesian National Police mobility not only preserves the purity of the civilian bureaucracy but also draws a vital constitutional lesson from the historical experience of Indonesian Armed Forces dual function, serving as a cautionary framework to prevent the reemergence of an administrative version of such overlapping roles. Rather than suggesting that current institutional dynamics are identical to the pervasive military dominance of the past, this link emphasizes the structural importance of protecting civilian governance from any modern, administrative form of role

duplication that could inadvertently compromise the democratic civil order.³¹

Reorientation of the Indonesian National Police institution becomes crucial within this legal-political reconstruction framework. Article 30 (4) of the 1945 Constitution of the Republic of Indonesia has firmly prescribed the Indonesian National Police's core mandate. However, over many years, this mandate has transformed into a structure of power that exceeds the security domain. The placement of the Indonesian National Police in civilian positions has shifted its institutional orientation from an institution for the maintenance of order into an administrative entity with broad access to centers of bureaucratic power.³²

The Constitutional Court's decision compels the Indonesian National Police to return to that core mandate and to distance itself from the administrative political arena. This reorientation is not merely a technocratic repositioning but a political-legal repositioning, namely, to restore the Indonesian National Police as a security apparatus that stands within its constitutional orbit, not as a political-administrative actor that infiltrates the spaces of civilian governance. The institutional reform of the

³¹ Muhammad Firdaus, Chryshnanda Dwilaksana, and Muhammad Daffa Auliarizky Oniella, 'Shifting Polri's Law Enforcement Strategy: Restorative Justice for Public Trust', *Jurnal Media Hukum* 30, no. 2 (December 2023): 160, <https://doi.org/10.18196/jmh.v30i2.18628>.

³² Arief Fitrianto, Fendy Suhariadi, and Nur Basuki Minarno, 'Reforming Polri's Community Policing: A Procedural Justice and Human Resource Approach to Building Police Legitimacy', *Edelweiss Applied Science and Technology* 9, no. 5 (May 2025): 1735, <https://learning-gate.com/index.php/2576-8484/article/view/7271>.

Indonesian National Police must be directed toward strengthening internal security professionalism and closing opportunities for role deviation into the administrative sphere.

Within the framework of legal-political reconstruction, administrative positions must be affirmed as an absolute civilian domain. Every modern democratic system clearly distinguishes between security functions and administrative functions of government; the Indonesian Constitution is no different. Article 28D (3) of the 1945 Constitution of the Republic of Indonesia affirms that every citizen has the right to equal opportunity in government. This norm implicitly declares that administrative positions must not be dominated by non-civilian actors.

The direction of political-legal change resulting from the Constitutional Court's decision is a restructuring of the security governance model within the context of a democratic state. Over many years, Indonesia's security governance model has permitted the police institution to exist within an overly broad spectrum of power. The Constitutional Court's decision compels the state to reformulate a security governance model that strictly separates the security domain from the administrative domain. Post-Constitutional Court decision security governance must guarantee that the

Indonesian National Police focus on the internal security function, while the function of state administration is entirely entrusted to the civilian apparatus.

The political implications of this decision are highly significant, particularly regarding the repositioning of the Indonesian National Police's power within the modern presidential system. As an apparatus under the President, the Indonesian National Police is an instrument that the executive can use to control the civilian bureaucracy if constitutional limitations are absent. The Constitutional Court's decision halts this dynamic by closing the administrative pathway that had for years rendered the Indonesian National Police an extension of executive power in civilian positions. Consequently, this decision redistributes power within the presidential system, strengthens the administrative autonomy of the bureaucracy, and affirms that the President does not possess the authority to expand the function of the security institution beyond constitutional boundaries.³³

This repositioning affirms that the Indonesian National Police is not a tool of executive power to control the structure of government but a state security organ subject to law and constitutional boundaries. The Constitutional Court's decision through its

³³ Eman Achmad Sulaeman et al., 'Reconstruction of the Absolute Competence of Civil Courts in the Settlement of Unlawful Acts by the Government in Indonesia', *Journal of Cultural Analysis and Social Change* 10, no. 3 (December 2025): 1730, <https://doi.org/10.64753/jcasc.v10i3.2661>.

political impact restores the balance of power within Indonesia's presidential architecture, ensuring that the pillar of state administration stands independently of security apparatus dominance.³⁴ This decision provides a normative blueprint for the legislator to enforce the civil state design, restore administrative meritocracy, eliminate the threat of security apparatus dominance, and strengthen administrative democracy. Legislation enacted after the Constitutional Court's decision must reflect this spirit, not merely technical revisions.³⁵ Accordingly, the reconstruction of police legal politics following the Constitutional Court's decision constitutes constitutional work to ensure that the state remains on the path of democracy, civilian supremacy, and limitation of power as the essence of the modern rule of law.

CONCLUSION

Constitutional Court Decision No. 114/PUU-XXIII/2025 serves as a definitive judicial mechanism that restores the strict constitutional boundary between state security and civil governance. By invalidating the ambiguous phrase in the elucidation to Article 28 (3) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, the Court corrected a significant form of

legislative misconduct that had previously enabled institutional penetration into the civilian bureaucracy and disrupted meritocracy. This landmark decision remedies administrative inequality and revitalizes the constitutional right to equal opportunity under Article 28D (3) of the 1945 Constitution of the Republic of Indonesia through a structural process of de-security governance.

Furthermore, this ruling creates an immediate constitutional obligation for the legislature to comprehensively amend the Police Law by embedding a strict doctrine of "no concurrent authority." Ultimately, this decision emphasizes the critical urgency for immediate legislative follow-up; without it, the ruling remains a mere normative correction rather than the profound structural reform needed to safeguard civilian supremacy, functional segregation, and the democratic rule of law.

SUGGESTIONS

Based on the legal reasoning of Constitutional Court Decision No. 114/PUU-XXIII/2025, the realization of civilian supremacy within Indonesia's bureaucratic governance demands a convergent reform agenda that addresses legislative lacunae,

³⁴ Rachmi Azanisa Putri, Panca Hadi Putra, and Ryan Randy Suryono, 'The Integrated Information System Implementation Strategy in Korlantas Polri Based on the Zachman Framework Approach', *Jurnal RESTI* 7, no. 2 (April 2023): 382, <https://doi.org/10.29207/resti.v7i2.4842>.

³⁵ Hananto Widodo et al., 'Balancing National Constitutions and International Trade Commitments: Comparative Insights from Indonesia, Thailand, and India', *Lampung Journal of International Law* 7, no. 2 (2025): 104–5, <https://doi.org/10.25041/lajil.v7i2.4813>.

executive praxis, institutional culture, and public accountability. To this end, this study recommends that the legislature and the executive undertake an immediate and comprehensive revision of Law No. 2 of 2002 concerning the Indonesian National Police, explicitly embedding the doctrine of no concurrent authority thereby prohibiting active police officers from occupying civilian posts unless they first secure permanent discharge and revoking all supplementary elucidations that risk amplifying the law's substantive norms. Simultaneously, the President, as the supreme holder of police authority, should issue a Presidential Regulation to mandate that the filling of all senior civilian positions in ministries and non-ministerial agencies adhere rigorously to open, competitive, and merit-based selection mechanisms, in full consonance with Law No. 20 of 2023 on the State Civil Apparatus and the constitutional assurance of equal opportunity. Furthermore, the National Police must proactively recalibrate its internal personnel management, concentrating its institutional orientation exclusively on the constitutional mandate prescribed in Article 30 (4) of the 1945 Constitution of the Republic of Indonesia the preservation of public security and order which necessitates the systematic withdrawal of all active personnel presently seconded to civilian portfolios.

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