

THE NATURE OF EXECUTIVE POWER AND THE ONTOLOGICAL DILEMMA OF POLICE INDEPENDENCE IN THE INDONESIAN CONSTITUTIONAL SYSTEM

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ABSTRACT

This study examines the nature of executive power and the ontological dilemma concerning the independence of the Indonesian National Police (Polri) within the Indonesian constitutional system. Unlike previous studies that generally position Polri merely as a normative component of the executive branch, this research specifically analyzes the tension between Polri's institutional placement under the President and the demand for independence in carrying out its law enforcement functions. The main issue addressed in this study is the ontological ambiguity regarding the position of Polri, whether it should be understood as a hierarchical executive organ or as a law enforcement institution that must be free from political interference. This research employs a normative juridical method with statutory and conceptual approaches, supported by the analysis of legal doctrines. The analysis focuses on the authority relationship between the President and Polri, the concept of independence in law enforcement, and its implications for the principle of the rule of law (*rechtstaat*). The findings indicate that constitutionally Polri falls within the scope of executive power, yet functionally it is required to maintain independence in performing its law enforcement duties. This condition creates an ontological dilemma, as Polri is structurally subordinate to the executive branch while simultaneously expected to uphold neutrality and professionalism. This study emphasizes the importance of clearly defining the boundaries between structural subordination and functional independence, in order to prevent undue political interference in law enforcement while ensuring accountability within a democratic system.

Keywords: Executive power, Indonesian National Police (Polri), Independence.

INTRODUCTION

Executive power in the Indonesian constitutional system plays a central role in the administration of government, including in the field of law enforcement. Within the framework of a state governed by law (*rechtstaat*), executive power does not merely perform administrative functions but also maintains a close relationship with law enforcement institutions, one of which is the Indonesian National Police (Polri).¹ This position raises a fundamental question regarding the boundary between political power and law enforcement functions. Constitutionally, Polri is placed under the President as the holder of governmental power under the 1945 Constitution of

¹ Sugiri Sugiri, "Pemahaman Kedudukan Dan Fungsi Polri Dalam Struktur Organisasi Sistem Kenegaraan," *Jurnal Ilmu Kepolisian* 17, no. 3 (December 28, 2023): 21, <https://doi.org/10.35879/jik.v17i3.417>.

the Republic of Indonesia. This arrangement indicates that Polri forms part of the executive branch of power. From a constitutional law perspective, this relationship reflects a form of structural subordination between Polri and the President as head of government. However, in practice, Polri is required to act independently, professionally, and free from political interference. Such independence constitutes a fundamental requirement for ensuring the principles of due process of law and equality before the law. Consequently, a tension arises between Polri's structural position within the executive branch and the demand for independence in carrying out its law enforcement functions.²

This issue is not merely practical in nature but also carries a profound philosophical dimension, particularly at the level of legal ontology. Legal ontology questions the essence of an institution, including how Polri should be understood within the constitutional system. The key question is whether Polri is merely an instrument of the state under the executive, or whether it possesses the characteristics of an autonomous law enforcement institution. In constitutional law doctrine, the concepts of separation of powers and distribution of powers are well recognized. Polri occupies a position that is not entirely clear, as it performs law enforcement functions that ideally require independence, while structurally remaining within the executive branch. This condition gives rise to both normative and conceptual ambiguity.³

Modern rule of law doctrine emphasizes the importance of guaranteeing the independence of law enforcement institutions in order to prevent abuse of power. Such independence is not limited to institutional autonomy but also includes independence in legal decision-making. Therefore, the position of Polri becomes crucial in maintaining the balance between power and law. At the same time, the principle of accountability in a democratic state requires that all state institutions, including Polri, remain subject to mechanisms of control. In this regard, the President, as the head of the executive, holds supervisory and administrative authority over Polri. This indicates that Polri's independence cannot be understood as absolute. The tension between independence and subordination gives rise to what can be described as an ontological dilemma. This dilemma concerns the fundamental identity of Polri within the constitutional system, namely whether Polri should be understood primarily as an executive organ or as a law enforcement institution possessing functional autonomy. In practice, this dilemma frequently emerges in various policies and law enforcement actions. There are often perceptions of political interference

² Heru Pujo Handoko, "Pergeseran Wewenang Polri Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja (Omnibus Law)," *Jurnal Ilmu Kepolisian* 16, no. 3 (December 1, 2022): 21, <https://doi.org/10.35879/jik.v16i3.319>.

³ Rasji Rasji, Najma Syamila, and Michellena Michellena, "Penerapan Teori Trias Politika Dalam Sistem Pemerintahan Indonesia," *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 10, no. 1 (May 1, 2024): 95–106, <https://doi.org/10.32699/syariati.v10i1.6477>.

in legal processes, which ultimately undermine public trust in Polri as an institution. This demonstrates that the issue is not merely theoretical but also has tangible practical implications.⁴

Furthermore, developments in law and politics in Indonesia have also influenced the dynamic position of Polri. The reform of the security sector following the amendments to the 1945 Constitution has brought significant changes to the status and functions of Polri. However, these changes have not fully resolved the fundamental issues related to its independence. From the perspective of administrative law, the relationship between the President and Polri can be understood as an authority relationship characterized by attribution and delegation. The President holds attributed authority as the holder of governmental power, while Polri exercises that authority through its operational functions. This further reinforces Polri's position within the structure of the executive branch.⁵

However, Polri performs a distinct role as an investigator and inquiry officer that must operate based on law rather than political directives. In this context, the principles of legality (*nullum crimen sine lege*) and the independence of law enforcement apply. The imbalance between structural and functional aspects creates the potential for conflicts of interest. On the one hand, Polri is required to remain loyal to the executive power structure; on the other hand, it must maintain objectivity in law enforcement. This condition highlights the existence of a dualism in Polri's institutional position. Such dualism can be examined through an ontological approach in order to understand the essence of Polri's existence. This approach is essential for formulating a clearer conceptual framework regarding Polri's position within the Indonesian constitutional system.

The debate on Polri's independence is also closely related to the concept of the rule of law, which places law as the highest authority.⁶ Within this framework, every act of law enforcement must be free from political influence. Therefore, the independence of Polri becomes a crucial element in realizing the supremacy of law. However, independence that is not balanced with accountability may lead to the abuse of authority. Accordingly, a balance between independence and control within a system of checks and balances is necessary. This remains a key challenge in formulating the ideal position of Polri.⁷

This study seeks to examine more deeply the ontological dilemma of Polri's independence in relation to executive power. The approach employed is not only normative but also conceptual,

⁴ Oksilia Yulita Indah, John Pieris, and Wiwik S. Widiarty, "Peran Administrasi Negara Dalam Prespektif Hukum Di Indonesia," *Ilmu Hukum Prima (IHP)* 7, no. 1 (April 30, 2024): 60–71, <https://doi.org/10.34012/jihp.v7i1.4969>.

⁵ Hendy F Kurniawan, "Eksistensi Kepolisian RI Di Tengah Disrupsi Politik Dan Citra Institusi," *Syntax Literate ; Jurnal Ilmiah Indonesia* 10, no. 6 (June 17, 2025), <https://doi.org/10.36418/syntax-literate.v10i6.59925>.

⁶ Anne Dennett, "8. Rule of Law," in *Public Law Directions* (Oxford University Press, 2024), 163–84, <https://doi.org/10.1093/he/9780198903420.003.0008>.

⁷ Deny M. Ramdhany et al., "Dinamika Politik Dan Hukum Dalam Mempengaruhi Penegakan Hukum Di Indonesia," *Themis : Jurnal Ilmu Hukum* 3, no. 1 (September 10, 2025): 47–56, <https://doi.org/10.70437/themis.v3i1.1402>.

aiming to understand the legal construction underlying Polri's institutional position. Accordingly, this study contributes to the development of legal scholarship, particularly in constitutional law, by offering a more comprehensive understanding of the relationship between executive power and law enforcement institutions. In addition, it is expected to provide conceptual recommendations for defining clear boundaries between structural subordination and Polri's functional independence. Such clarification is essential to prevent undue political interference in law enforcement. Ultimately, this study affirms that a clear institutional position of Polri within the constitutional system constitutes a fundamental prerequisite for the realization of a democratic state governed by law, grounded in justice and committed to the supremacy of law.

METHOD

This study employs a normative juridical method, focusing on the analysis of legal norms contained in statutory regulations and legal doctrines. This method is appropriate as the study examines the position of Polri within the Indonesian constitutional system as well as the concept of its independence from a constitutional law perspective. The approaches used in this research include the statutory approach and the conceptual approach. The statutory approach is conducted by examining the 1945 Constitution of the Republic of Indonesia and relevant regulations concerning Polri. Meanwhile, the conceptual approach is used to analyze key legal concepts such as executive power, independence, and the principle of a state governed by law (*rechtstaat*).⁸

The legal materials used in this study consist of primary legal materials in the form of statutory regulations, as well as secondary legal materials such as relevant legal books and scholarly journals. The collection of legal materials is conducted through library research. These materials are analyzed qualitatively using methods of legal interpretation to address issues concerning the position of Polri and the limits of its independence within the Indonesian constitutional system.⁹

DISCUSSION

The Nature of Executive Power in the Indonesian Constitutional System

Executive power constitutes one of the fundamental elements within the constitutional system, functioning to administer the government of the state. From a constitutional law perspective, this power is not merely administrative in nature but also encompasses the authority to formulate and implement public policies. Executive power is vested in the President as the head of government, as stipulated in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which serves as the constitutional basis for the exercise of executive functions.

⁸ Achmad Muchtarom and Megawati Barthos, "Strategy for Strengthening the Implementation of Progressive Law in the Republic of Indonesia National Police," *International Journal of Social Service and Research* 5, no. 6 (June 21, 2025): 588–95, <https://doi.org/10.46799/ijssr.v5i6.1246>.

⁹ Putu Andika Wahyudi Putra and I Gede Agus Kurniawan, "Kopolnas as a Police Oversight Institution," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (June 30, 2025): 4909–27, <https://doi.org/10.31941/pj.v24i2.7080>.

Theoretically, the concept of executive power cannot be separated from the doctrine of trias politica proposed by Montesquieu, which divides state power into three branches, namely the legislative, executive, and judiciary, with the aim of preventing the concentration of power. However, in its modern development, the separation of powers is no longer understood in a rigid manner. Jimly Asshiddiqie explains that Indonesia does not adopt an absolute separation of powers, but rather a distribution of powers that allows for cooperation among state institutions.

Accordingly, executive power remains interconnected with other branches of government. For instance, in the law-making process, the President plays a role alongside the House of Representatives (DPR), demonstrating the interdependence among state institutions.¹⁰ However, such extensive power carries the potential for abuse of power if it is not limited by law. Therefore, the concept of a state governed by law (*rechtstaat*) becomes essential as a foundation for restricting executive power. Within the concept of *rechtstaat*, every governmental action must be based on law. Friedrich Julius Stahl emphasizes that a state governed by law requires the protection of human rights and the limitation of power through legal norms. In addition, A. V. Dicey, through the concept of the rule of law, asserts that no authority may stand above the law. This principle places law as the highest authority within the state, as reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that executive power must be subject to law and cannot be exercised arbitrarily.¹¹

Executive power must also be exercised within a democratic framework, as reflected in the fourth principle of Pancasila, namely “Democracy guided by the inner wisdom in deliberation and representation.” This principle emphasizes that executive power should be oriented toward the interests of the people and exercised with wisdom, thereby establishing that the legitimacy of executive authority is derived from the people. In a democratic state, power must always be limited and supervised to prevent deviation from the objectives of the state. This principle equally applies to executive power, which, although strong in a presidential system, remains subject to constitutional limitations and the mechanism of checks and balances. The legislature, particularly the House of Representatives (DPR), performs a supervisory function over executive policies as part of this balancing mechanism. Furthermore, the judiciary plays a role in reviewing executive actions or policies that contradict the law, serving as a form of juridical control over executive power. Executive actions must comply with the principle of legality, meaning that every governmental decision must have a clear legal basis. In addition, the General Principles of Good Governance (Asas-Asas Umum Pemerintahan yang Baik or AUPB) function as guiding standards, including legal certainty, prudence, and the prohibition of abuse of authority, as emphasized by Philipus M. Hadjon.

¹⁰ Rasji, Syamila, and Michellena, “Penerapan Teori Trias Politika Dalam Sistem Pemerintahan Indonesia.”

¹¹ Haryadi Haryadi and Hamdani Hamdani, “Problematik Frasa Mempunyai Kekuatan Hukum Mengikat Dalam Peraturan Perundang-Undangan,” *TANJUNGPURA LAW JOURNAL* 9, no. 1 (January 23, 2025), <https://doi.org/10.26418/tlj.v9i1.89280>.

In practice, executive power is exercised through a complex bureaucratic structure, with the President assisted by ministers responsible for various governmental sectors. This hierarchical structure reflects the organized nature of executive authority; however, such hierarchy must not undermine the principles of professionalism and accountability. Executive power also plays a significant role in law enforcement through institutions within its domain, demonstrating the close relationship between governance and law enforcement functions. Nevertheless, this relationship may create potential conflicts, particularly when political power influences legal processes. Therefore, clear boundaries are required between executive authority and the independence of law enforcement institutions. In legal doctrine, the concept of *freies Ermessen* or administrative discretion allows the executive to act in situations not explicitly regulated by law, yet such discretion must remain legally accountable. Excessive use of discretion may lead to abuse of authority, making oversight both administrative and judicial essential within the constitutional system.

Executive power is also closely linked to public service functions, as the government is obliged to provide fair and equitable services to society. In this regard, the principle of good governance becomes highly relevant, emphasizing transparency, accountability, and participation, as highlighted by Jimly Asshiddiqie. Additionally, global developments have influenced the concept of executive power, with increasing demands for transparency and accountability in line with democratic progress. Indonesia's reform era in 1998 marked a significant turning point in restructuring executive power. These reforms aimed to limit the previously dominant power of the President and strengthen legislative and judicial institutions as checks on executive authority, resulting in a shift toward a more democratic system. However, challenges remain in balancing governmental effectiveness with limitations on power. Maintaining this balance is crucial, as excessive concentration of power risks authoritarianism, while insufficient authority may hinder governance.

Accordingly, it can be understood that the nature of executive power lies not only in its formal authority but also in how such power is exercised within a legal framework. This analysis reveals a duality of executive power, as both a policymaking authority and a subject bound by law. Such duality characterizes modern constitutional states, requiring executive power in Indonesia to be understood comprehensively from normative, theoretical, and practical perspectives. Ultimately, executive power must be exercised proportionally, within its legal limits, and in accordance with the principles of democracy and the rule of law in order to achieve the objectives of the state.

The Position of the Indonesian National Police within the Structure of Executive Power

The position of the Indonesian National Police (Polri) within the structure of executive power reflects an institutional status that is not entirely identical to other executive organs, as Polri possesses a distinct character as a law enforcement institution. Normatively, Polri is placed under the President as the holder of governmental power, and this arrangement confirms a structural

relationship of subordination. However, in practice, this relationship is not always linear, as the function of law enforcement requires a certain degree of independence. This condition creates a distinction between formal structure and functional practice. In constitutional law analysis, this phenomenon is referred to as institutional differentiation, indicating that Polri cannot be equated with ordinary administrative bodies. Within an institutional approach, Polri may be understood as an organ with mixed functions, as it performs both governmental and legal functions simultaneously.

This dual function places Polri in a complex position, as it must remain within the executive structure while also maintaining legal objectivity. In practice, this often generates tension, particularly when political interests intersect with legal processes. According to Satjipto Rahardjo, law operates within a social space influenced by power, which implies that Polri's position is never entirely neutral in structural terms. This perspective provides an important foundation for understanding the institutional dynamics of Polri.¹² The authority vested in Polri within the legal system grants it significant power, particularly due to its role at the initial stage of the criminal process. This authority includes investigative and inquiry functions, enabling Polri to determine the direction of a case. From a criminal law perspective, this position is highly strategic, as it determines whether a particular event will enter the criminal justice system. According to Romli Atmasasmita, this initial role must be carried out with professionalism, as errors at this stage may affect the entire legal process. Therefore, high ethical and professional standards are required to prevent the misuse of such authority.

Polri's position within the executive branch also influences its relationship with other law enforcement institutions, as it forms part of an integrated criminal justice system. This relationship requires effective coordination, since without it, law enforcement cannot function optimally. In practice, differences in perspective often arise between investigators and public prosecutors, reflecting institutional dynamics that necessitate mechanisms of harmonization. From a constitutional law perspective, this indicates that the system does not always operate ideally, yet still requires strengthened coordination among institutions. Polri's authority is closely related to actions that often intersect with human rights, as such authority may limit individual freedoms. Measures such as arrest and detention must be conducted in accordance with the law; otherwise, they may constitute violations of rights. Within legal doctrine, the principle of legality serves as the primary foundation, requiring that every action have a clear legal basis. However, in practice, this presents challenges, as not all situations are regulated in detail, thereby requiring Polri to exercise caution in the use of its authority.

Polri's position is also linked to the system of leadership appointment, as the Chief of Police is appointed by the President with the approval of the House of Representatives (DPR). This mechanism reflects the existence of political control over the institution, as no power stands

¹² Kurniawan, "Eksistensi Kepolisian RI Di Tengah Disrupsi Politik Dan Citra Institusi."

entirely independent. From the perspective of checks and balances, this constitutes a form of oversight; however, in practice, the process is not entirely free from political interests, which may influence policy direction. This condition indicates that Polri's independence is not absolute, but operates within a broader political framework.

From a constitutional law perspective, Polri's position reflects a relationship between power and law, as it operates at the intersection of these two domains. This relationship generates a structural tension, as Polri is required to enforce the law within an environment shaped by political authority. According to Philipus M. Hadjon, governmental actions must always be legally accountable, which implies that Polri must not act arbitrarily. This principle serves as an essential foundation for maintaining institutional integrity, ensuring that law remains the primary guiding framework. Polri's position is also influenced by aspects of internal legal culture, as organizational values and ethics determine how authority is exercised. A strong legal culture supports professionalism, as officers act in accordance with legal principles. Conversely, a weak legal culture creates opportunities for deviation, which may undermine public trust. Therefore, internal reform becomes crucial, as structural changes alone are insufficient without corresponding transformation in organizational values.¹³

In governmental practice, Polri also plays a role in maintaining social stability, as its duties are closely related to security and public order. This function often intersects with political interests, particularly in certain situations, thereby requiring Polri to maintain neutrality, as any form of partiality may undermine its legitimacy. From a constitutional law perspective, neutrality constitutes a fundamental principle, as it ensures fairness in law enforcement. Accordingly, Polri must maintain a clear distance from political interests.¹⁴

Polri's position within the executive branch is also closely related to the budgeting system, as its budget is determined through political mechanisms. This condition reflects a degree of dependence on political decisions, which may influence institutional independence. From a constitutional law perspective, this arrangement constitutes a form of control; however, it must be carefully managed to prevent it from becoming a tool of pressure, thereby ensuring that Polri can continue to perform its duties professionally. Accordingly, this condition underscores the importance of transparency in budget management. From the perspective of power theory, Polri possesses the characteristics of an institution that exercises coercive power, as its authority enables it to compel compliance from citizens. Such power must be limited by law, as the absence of legal constraints may lead to abuse. This reflects the legal doctrine known as the principle of proportionality, whereby every action must be balanced with its intended objective. This principle is essential in maintaining justice, ensuring that power is not exercised excessively.

¹³ Ishmael Mugari and Emeka E. Obioha, "Patterns, Costs, and Implications of Police Abuse to Citizens' Rights in the Republic of Zimbabwe," *Social Sciences* 7, no. 7 (July 16, 2018): 116, <https://doi.org/10.3390/socsci7070116>.

¹⁴ Kurniawan, "Eksistensi Kepolisian RI Di Tengah Disrupsi Politik Dan Citra Institusi."

Polri's position also highlights the need for clear regulatory frameworks, as its complex institutional role may give rise to legal uncertainty. Such regulation must define the boundaries of authority and independence in order to prevent conflicts. In practice, existing regulations are often insufficient to address all emerging issues, thereby requiring legal interpretation. In this context, legal doctrine, particularly the principle of proportionality, plays a significant role in guiding the interpretation and application of the law. In its relationship with society, Polri also functions as a public service institution, as its duties extend beyond law enforcement to include the provision of protection and services. In modern perspectives, this is reflected in the concept of community policing, which emphasizes partnership between the police and the community. This approach enhances public trust by involving citizens, thereby positioning Polri not merely as an instrument of the state but also as an integral part of society.¹⁵

Polri's position is also closely related to social legitimacy, as the effectiveness of law enforcement depends on public trust. Such legitimacy is not determined solely by legal norms but also by the conduct of law enforcement officers, making professionalism a crucial factor. In this context, transparency becomes essential, as it enables public oversight and allows Polri to maintain public confidence. From an institutional analysis, Polri reflects an interplay between structure and function, as these two aspects do not always operate in alignment. Structurally, Polri demonstrates subordination to the President, whereas functionally it requires a degree of independence. This divergence creates institutional dynamics that necessitate balance, representing a common phenomenon in constitutional systems where institutional arrangements do not always operate in a strictly linear manner.¹⁶

Polri's position also reflects the development of the modern state, in which law enforcement institutions are no longer rigidly separated but operate within an integrated system. This condition demonstrates the flexibility of the constitutional system; however, such flexibility must be balanced with clear legal norms to prevent abuse. In this regard, law functions as a limiting framework to ensure that power remains controlled. Polri must be accountable for every action, given that its authority carries significant consequences. This accountability is implemented through both internal and external mechanisms, with oversight playing a crucial role in preventing deviations in practice. Public participation is equally important as part of social control, ensuring that Polri does not operate without supervision. Polri's position within the executive system is also closely linked to the professionalism of its personnel, as the quality of human resources determines the quality of law enforcement. Professionalism encompasses both competence and integrity, enabling officers to perform their duties effectively.

In this context, education and training within Polri become essential, as they enhance institutional capacity and ensure optimal performance of its functions. From a constitutional law

¹⁵ Mugari and Obioha, "Patterns, Costs, and Implications of Police Abuse to Citizens' Rights in the Republic of Zimbabwe."

¹⁶ Indah, Pieris, and Widiarty, "Peran Administrasi Negara Dalam Prespektif Hukum Di Indonesia."

perspective, Polri's position indicates the need for a concept of independence that is not absolute, but rather balanced with accountability. This concept is referred to as functional independence, as it applies specifically to the execution of legal duties, while structurally Polri remains within the executive branch. This framework serves as a means of maintaining balance within the system, allowing it to function effectively. Polri's position also reflects the inherent relationship between law and politics, as the institution operates within a sphere of power. This relationship is unavoidable, given the interconnection between law and politics. Therefore, Polri must uphold professionalism to remain unaffected by competing interests, which continues to pose a significant challenge in constitutional practice.¹⁷

Polri reflects a level of complexity that cannot be simplified, as it involves multiple dimensions, including legal, political, and social aspects. Its position also requires continuous reform, as the system evolves and such reform must encompass both regulatory frameworks and practical implementation capable of addressing emerging challenges. This is crucial in shaping the direction of institutional policy, enabling Polri to adapt to ongoing changes. Looking forward, Polri's position should be directed toward strengthening professionalism and independence, as these elements constitute key determinants of institutional effectiveness. Such strengthening must be carried out systematically, ensuring that it is not merely formal but also substantive. In this context, legal education plays an important role in shaping the mindset and integrity of law enforcement personnel.

Ultimately, Polri's position within the structure of executive power demonstrates its unique institutional character, as it operates at the intersection of power and law. This position requires a careful balance to prevent the dominance of either aspect, thereby necessitating appropriate regulatory frameworks. Accordingly, Polri's position must be understood as a dynamic construct that continues to evolve in response to changing needs. This dynamic nature indicates that the constitutional system is not static and requires continuous adjustment. In this regard, law plays a dominant role in ensuring that such changes remain within the proper normative framework.

The Ontological Dilemma of Polri's Independence in Law Enforcement

The independence of the Indonesian National Police (Polri) in law enforcement cannot be understood as an absolute concept, as structurally Polri remains within the executive branch. This condition confirms the existence of institutional attachment, while functionally Polri is required to enforce the law objectively. Consequently, a distinction arises between its normative position and its practical operation, reflecting an inherent duality that renders Polri's independence limited.

Polri is more appropriately understood in terms of functional independence, as such independence applies specifically to the execution of law enforcement duties. In contrast, in matters of organization and policy, Polri remains within the executive structure. This condition

¹⁷ Ngurah Wahyu Resta, "Legal Certainty of The Independence of The Prosecutor's Office In Indonesia," *Journal of Social Research* 4, no. 4 (March 28, 2025): 765–77, <https://doi.org/10.55324/josr.v4i4.2510>.

indicates that Polri's independence does not stand alone but is dependent upon the system that governs it, thereby making such independence contextual rather than absolute. The absence of a clear boundary between structural subordination and functional independence further complicates this condition. In practice, these two aspects frequently overlap and are difficult to distinguish. This situation generates uncertainty in the exercise of authority and underscores the need for clearer legal delineation within the existing constitutional framework.¹⁸

The potential for power intervention in law enforcement remains present, as the institutional structure allows for external influence. Such intervention is not always direct but may take the form of administrative or political pressure. This condition indicates that Polri's independence is vulnerable to the influence of power, thereby necessitating stronger protective mechanisms. The integrity of law enforcement officers becomes a crucial factor in safeguarding independence. In situations of dilemma, individual decisions significantly determine the direction of law enforcement. When integrity is strong, independence can be maintained; conversely, when integrity is weak, independence is easily compromised. The use of discretion by Polri also constitutes a critical point in relation to independence. Discretion provides a degree of freedom in decision-making; however, such freedom may be misused if not properly controlled. Therefore, clear limitations on the use of discretion are required in order to prevent abuse of authority.¹⁹

Furthermore, the principle of the rule of law has not been consistently implemented in practice, as indications of power influence in law enforcement remain evident. This condition reflects a gap between normative standards and actual practice.²⁰ Accordingly, strengthening legal principles in the execution of Polri's duties becomes essential. Polri's independence has a direct impact on public trust, as society evaluates justice based on how law is enforced by authorities. When independence is compromised, public trust declines, demonstrating that independence carries broad implications within the legal system.

The system of oversight over Polri reflects limitations in control mechanisms that may create opportunities for the abuse of authority, thereby requiring a more comprehensive and integrated supervisory framework. In addition, the relationship between independence and accountability reveals an imbalance, as in practice one aspect tends to dominate the other, resulting in a less optimal law enforcement system and highlighting the need for proportional harmonization between independence and accountability as two principles that must operate in balance. In practice, law enforcement is often subject to non-legal pressures originating from the sphere of power, which may influence legal processes. This condition makes it difficult to maintain independence consistently, thus necessitating protective measures for law enforcement officers. Furthermore, organizational culture within Polri significantly affects independence, as internal values and norms

¹⁸ Indah, Pieris, and Widiarty, "PERAN ADMINISTRASI NEGARA DALAM PRESPEKTIF HUKUM DI INDONESIA."

¹⁹ Wahyu Resta, "Legal Certainty of The Independence of The Prosecutor's Office In Indonesia."

²⁰ Dennett, "8. Rule of Law."

shape the behavior of officers in carrying out their duties. A strong legal culture supports the preservation of independence, whereas a weak culture increases the risk of deviation.²¹

The professionalism of law enforcement officers is a key factor in maintaining independence. Competence and integrity determine the quality of legal decisions, indicating that independence is not solely shaped by institutional structure but also by the quality of human resources. Instances of inconsistency in the application of law have occurred due to the influence of non-legal factors, reflecting that Polri's independence has not yet reached full stability. This condition underscores the need for clearer and more stringent standards in law enforcement. The ontological dilemma of Polri's independence arises as a consequence of its institutional design, as Polri is not positioned as a fully independent body. This condition indicates that the dilemma is systemic in nature and requires both structural and cultural solutions. Polri is significantly influenced by its relationship with political power, resulting in an interaction between law and politics. This demonstrates that independence cannot be entirely separated from its political context and therefore requires clearly defined limitations.²²

The principle of equality before the law has not been fully realized, as indications of unequal treatment in law enforcement remain evident. This condition demonstrates that independence is closely linked to justice, requiring consistent safeguarding of Polri's independence.²³ In addition, the practice of due process of law frequently encounters challenges in the form of pressures that influence legal procedures, highlighting that independence is a crucial factor in ensuring procedural integrity. Without independence, legal processes cannot function optimally.²⁴

Polri's independence has inherent limits determined by the legal system and cannot exist outside the framework of accountability, meaning that independence must be understood as responsibility-bound rather than absolute. The dilemma between independence and subordination cannot be entirely eliminated, as it constitutes an inherent feature of the constitutional structure. This condition indicates that the appropriate approach is not to remove the dilemma, but to manage it effectively, thereby ensuring that the system operates in a balanced manner.²⁵

An ontological approach to law provides a deeper understanding of independence by examining its philosophical essence rather than merely its normative dimension, thereby demonstrating that independence is not solely a matter of rules but also relates to underlying values and meaning. The independence of Polri should be strengthened through non-structural

²¹ Wahyu Resta, "Legal Certainty of The Independence of The Prosecutor's Office In Indonesia."

²² Ramdhany et al., "Dinamika Politik Dan Hukum Dalam Mempengaruhi Penegakan Hukum Di Indonesia."

²³ Putu Gde Nuraharja Adi Partha, Bayu Dwi Anggono, and Fanny Tanuwijaya, "PENERAPAN ASAS EQUALITY BEFORE THE LAW BERDASARKAN KEADILAN RESTORATIF TERHADAP PUTUSAN HAKIM DALAM MENGADILI," *Jurnal Jendela Hukum* 11, no. 2 (September 30, 2024): 250–79, <https://doi.org/10.24929/jjh.v11i2.4200>.

²⁴ Rendi Lapatigar, Suhadi Suhadi, and Rodiyah Rodiyah, "Integrating Due Process Into The Enforcement Framework of Criminal Law Politics," *IJCLS (Indonesian Journal of Criminal Law Studies)* 9, no. 1 (May 30, 2024): 133–56, <https://doi.org/10.15294/ijcls.v9i1.50293>.

²⁵ Indah, Pieris, and Widiarty, "Peran Administrasi Negara Dalam Prespektif Hukum Di Indonesia."

mechanisms, including professional ethics and the professionalism of law enforcement officers. Structural reforms alone are insufficient to guarantee independence, thus requiring a multidimensional approach to ensure its effective reinforcement. The ontological dilemma of Polri's independence has a direct impact on the quality of law enforcement, as independence influences both objectivity and fairness in every legal process. Addressing this dilemma becomes essential, necessitating systematic and continuous efforts to maintain an appropriate balance.²⁶ The balance between independence and accountability constitutes a central principle in the law enforcement system, as both aspects must operate simultaneously and complement each other. No single solution exists to resolve the existing dilemma; rather, a comprehensive regulatory approach is required. Accordingly, Polri's independence is limited and contextual in nature, as it remains situated within the structure of power while still needing to be preserved in the exercise of law enforcement functions. This necessitates a balance between power and law to ensure that law enforcement is carried out in a fair and professional manner.

CONCLUSION

This study concludes that the position of the Indonesian National Police (Polri) within the structure of executive power reflects an inseparable duality between structural subordination and the demand for independence in law enforcement. Constitutionally, Polri operates under the authority of the President as part of the executive branch, while functionally it is required to enforce the law in an objective, professional, and impartial manner, free from undue interference. This condition gives rise to an ontological dilemma concerning the nature of Polri's independence, as such independence cannot be understood as absolute freedom, but rather as functional independence exercised within a framework of accountability and legal responsibility. In practice, the absence of a clear boundary between structural subordination and functional independence creates opportunities for power intervention, inconsistencies in law enforcement, and potential disruptions to the principles of the rule of law, equality before the law, and due process of law.

In light of these findings, this study recommends a reconstruction of the concept of Polri's independence by clearly delineating the boundaries between structural authority and functional independence in law enforcement. Independence should be positioned as a functional principle exercised in a professional and law-based manner, while remaining within the framework of democratic accountability. Strengthening independence should not rely solely on regulatory reform but must also involve the reinforcement of professional ethics, institutional integrity, and legal culture within Polri, alongside the optimization of oversight mechanisms that are non-interventionist in nature. This approach is essential to maintaining a balance between executive control and law enforcement independence, thereby enabling Polri to perform its functions objectively, ensure legal certainty, and realize a fair and professional law enforcement system within the framework of the Indonesian rule of law.

²⁶ Wahyu Resta, "Legal Certainty of The Independence of The Prosecutor's Office In Indonesia."

REFERENCES

- Adi Partha, Putu Gde Nuraharja, Bayu Dwi Anggono, and Fanny Tanuwijaya. "PENERAPAN ASAS EQUALITY BEFORE THE LAW BERDASARKAN KEADILAN RESTORATIF TERHADAP PUTUSAN HAKIM DALAM MENGADILI." *Jurnal Jendela Hukum* 11, no. 2 (September 30, 2024): 250–79. <https://doi.org/10.24929/jjh.v11i2.4200>.
- Dennett, Anne. "8. Rule of Law." In *Public Law Directions*, 163–84. Oxford University Press, 2024. <https://doi.org/10.1093/he/9780198903420.003.0008>.
- Handoko, Heru Pujo. "Pergeseran Wewenang Polri Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja (Omnibus Law)." *Jurnal Ilmu Kepolisian* 16, no. 3 (December 1, 2022): 21. <https://doi.org/10.35879/jik.v16i3.319>.
- Haryadi, Haryadi, and Hamdani Hamdani. "PROBLEMATIK FRASA MEMPUNYAI KEKUATAN HUKUM MENGIKAT DALAM PERATURAN PERUNDANG-UNDANGAN." *TANJUNGPURA LAW JOURNAL* 9, no. 1 (January 23, 2025). <https://doi.org/10.26418/tlj.v9i1.89280>.
- Indah, Oksilia Yulita, John Pieris, and Wiwik S. Widiarty. "PERAN ADMINISTRASI NEGARA DALAM PRESPEKTIF HUKUM DI INDONESIA." *Ilmu Hukum Prima (IHP)* 7, no. 1 (April 30, 2024): 60–71. <https://doi.org/10.34012/jihp.v7i1.4969>.
- Kurniawan, Hendy F. "Eksistensi Kepolisian RI Di Tengah Disrupsi Politik Dan Citra Institusi." *Syntax Literate ; Jurnal Ilmiah Indonesia* 10, no. 6 (June 17, 2025). <https://doi.org/10.36418/syntax-literate.v10i6.59925>.
- Laputigar, Rendy, Suhadi Suhadi, and Rodiyah Rodiyah. "Integrating Due Process Into The Enforcement Framework of Criminal Law Politics." *IJCLS (Indonesian Journal of Criminal Law Studies)* 9, no. 1 (May 30, 2024): 133–56. <https://doi.org/10.15294/ijcls.v9i1.50293>.
- Muchtarom, Achmad, and Megawati Barthos. "Strategy for Strengthening the Implementation of Progressive Law in the Republic of Indonesia National Police." *International Journal of Social Service and Research* 5, no. 6 (June 21, 2025): 588–95. <https://doi.org/10.46799/ijssr.v5i6.1246>.
- Mugari, Ishmael, and Emeka E. Obioha. "Patterns, Costs, and Implications of Police Abuse to Citizens' Rights in the Republic of Zimbabwe." *Social Sciences* 7, no. 7 (July 16, 2018): 116. <https://doi.org/10.3390/socsci7070116>.
- Putra, Putu Andika Wahyudi, and I Gede Agus Kurniawan. "Kopolnas as a Police Oversight Institution." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (June 30, 2025): 4909–27. <https://doi.org/10.31941/pj.v24i2.7080>.
- Ramdhany, Deny M., Budiono Budiono, Dedi Junaedi, Jeny Mellysa Ariyanti, Imas Rosidawati Wiradirja, and Deny Haspada. "Dinamika Politik Dan Hukum Dalam Mempengaruhi Penegakan Hukum Di Indonesia." *Themis : Jurnal Ilmu Hukum* 3, no. 1 (September 10, 2025): 47–56. <https://doi.org/10.70437/themis.v3i1.1402>.
- Rasji, Rasji, Najma Syamila, and Michellena Michellena. "Penerapan Teori Trias Politika Dalam Sistem Pemerintahan Indonesia." *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 10, no. 1 (May 1, 2024): 95–106. <https://doi.org/10.32699/syariati.v10i1.6477>.
- Sugiri, Sugiri. "PEMAHAMAN KEDUDUKAN DAN FUNGSI POLRI DALAM STRUKTUR ORGANISASI SISTEM KENEGARAANPEMAHAMAN KEDUDUKAN DAN FUNGSI POLRI DALAM STRUKTUR ORGANISASI SISTEM KENEGARAAN." *Jurnal Ilmu*

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DOI: <https://doi.org/10.30596/nomoi.v7i1.29947>

Kepolisian 17, no. 3 (December 28, 2023): 21. <https://doi.org/10.35879/jik.v17i3.417>.

Wahyu Resta, Ngurah. "Legal Certainty of The Independence of The Prosecutor's Office In Indonesia." *Journal of Social Research* 4, no. 4 (March 28, 2025): 765–77. <https://doi.org/10.55324/josr.v4i4.2510>.