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## **Challenges and Structures of Judicial Independence: Lessons from Indonesia and the Netherlands**

### **1. Introduction**

A fair and independent judicial system is one of the main pillars in maintaining the rule of law and democracy in various countries.<sup>2</sup> The concept of judicial independence is not only fundamental in protecting individual rights, but also important in ensuring that the courts function without external pressure from the executive or legislative branches. In this context, the Netherlands and Indonesia offer an interesting comparative study. Although both demonstrate a commitment to judicial independence, their historical backgrounds, legal traditions, and structural challenges are very different, creating unique dynamics in the implementation of this principle.

The long history of the Dutch legal system shows the evolution of a highly structured European continental law, with an emphasis on written law and professional administration. The presence of the Judicial Council (*Raad voor de Rechtspraak*) and the influence of international standards such as the European Convention on Human Rights (ECHR) have strengthened the independence of the judiciary in the Netherlands.<sup>3</sup> In contrast, the Indonesian legal system developed from a combination of customary law traditions, Islamic law, and the Dutch colonial legacy, resulting in a mixed legal system with unique challenges in maintaining judicial consistency and independence.<sup>4</sup>

Previous research on judicial independence in both countries has provided valuable insights. For example, a study by Nicola in 2016 highlighted the importance of a professional administrative structure in supporting judicial independence in countries with continental legal systems such as the Netherlands.<sup>5</sup> On the other hand, Chandranegara in 2019 showed that the Indonesian legal system faces major challenges in the form of political intervention and corruption, which often hinder the implementation of judicial independence.<sup>6</sup> In addition, Tamanaha analyzed the influence of colonial heritage in shaping the legal system in Indonesia, showing that legal pluralism can be both a source of strength and an obstacle.<sup>7</sup> Meanwhile, Isra et al stated that the interaction between

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<sup>2</sup> Laurent Pech, “The EU as a Global Rule of Law Promoter: The Consistency and Effectiveness Challenges,” *Asia Europe Journal* 14, no. 1 (March 24, 2016): 7–24, <https://doi.org/10.1007/s10308-015-0432-z>.

<sup>3</sup> Paul van Sasse van Ysselt, “Constitutional Advice and Signals in the Netherlands: Actors and Impact,” 2022, 53–82, [https://doi.org/10.1007/978-94-6265-535-5\\_4](https://doi.org/10.1007/978-94-6265-535-5_4).

<sup>4</sup> Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, “The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems,” *Cogent Social Sciences* 8, no. 1 (December 31, 2022), <https://doi.org/10.1080/23311886.2022.2104710>.

<sup>5</sup> Fernanda G. Nicola, “National Legal Traditions at Work in the Jurisprudence of the Court of Justice of the European Union†,” *The American Journal of Comparative Law* 64, no. 4 (December 1, 2016): 865–89, <https://doi.org/10.1093/ajcl/avw015>.

<sup>6</sup> Ibnu Sina Chandranegara, “Defining Judicial Independence and Accountability Post Political Transition,” *Constitutional Review* 5, no. 2 (November 18, 2019): 294, <https://doi.org/10.31078/consrev525>.

<sup>7</sup> Brian Z. Tamanaha, “Legal Pluralism across the Global South: Colonial Origins and Contemporary Consequences,” *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 4, 2021): 168–205, <https://doi.org/10.1080/07329113.2021.1942606>.

customary law, religious law, and state law in Indonesia creates complex dynamics that require comprehensive legal reform to strengthen the independence of judicial institutions.<sup>8</sup>

Although much research has been done, there are several gaps that have not been fully answered. Most studies tend to focus on the theoretical aspects of judicial independence or practical challenges in each country, but not many have in-depth compared the administrative approach, institutional structure, and the influence of international standards on the implementation of judicial independence in the Netherlands and Indonesia. Existing studies also often ignore the impact of local social, political, and cultural contexts on the implementation of this principle, which are actually very relevant in understanding the differences and similarities between the two countries.

This study aims to fill this gap by offering a more in-depth comparative analysis of the constitutional framework, organizational structure of the judiciary, and the implementation of the principle of judicial independence in the Netherlands and Indonesia. The novelty of this study lies in its holistic approach, not only relying on formal legal analysis but also considering social, political, and cultural factors that influence the implementation of the principle of judicial independence. In addition, this study also explores how international standards such as the ECHR in the Netherlands and other international legal instruments that have been ratified by Indonesia influence the formation and implementation of domestic law.

The main objective of this study is to provide a more comprehensive insight into how the principle of judicial independence is implemented in two countries with different legal backgrounds. This study aims to compare the legal and constitutional frameworks that support judicial independence in the Netherlands and Indonesia; analyze the influence of institutional and administrative structures on the implementation of this principle in both countries; and identify lessons that Indonesia can learn from the Dutch experience in adopting international standards and strengthening the independence of judicial institutions. Thus, this study not only contributes to the academic literature on comparative law but also provides practical recommendations for policy makers in Indonesia to strengthen its judicial system.

## 2. Constitutional Framework for Judicial Independence

Legal and constitutional guarantees in the Netherlands have a long history that reflects the country's commitment to the principle of judicial independence. Although the Dutch Constitution does not explicitly mention judicial independence, various laws and legal policies provide strong guarantees to maintain the independence of the judiciary. The legal system in the Netherlands is regulated by the *Wet op de Rechterlijke Organisatie* (Organization of the Judiciary Act), which is the basis for the organization of the judicial structure in the country.<sup>9</sup> Through this law, the independence of judges is maintained through strict appointment mechanisms, terms of office and oversight procedures.

The Judicial Council (*Raad voor de Rechtspraak*) plays a key role in ensuring the independence of judges in the Netherlands. This council manages the administration of the judiciary, including budget and human resources, and ensures that judges are not subject to influence from the executive

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<sup>8</sup> Saldi Isra, Ferdi Ferdi, and Hilaire Tegan, "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia," *Hasanuddin Law Review* 3, no. 2 (August 12, 2017): 117, <https://doi.org/10.20956/halrev.v3i2.1081>.

<sup>9</sup> Nina L. Holvast and Nienke Doornbos, "Exit, Voice, and Loyalty within the Judiciary: Judges' Responses to New Managerialism in the Netherlands," *Utrecht Law Review* 11, no. 2 (July 2, 2015): 49, <https://doi.org/10.18352/ulr.317>.

or legislative branches.<sup>10</sup> Judges in the Netherlands are appointed by the King on the recommendation of the Judicial Council, with the provision that the appointment is permanent until retirement, unless the judge is proven to have committed a serious violation of the law.<sup>11</sup>

In addition, supervision of judges is carried out by an internal oversight body that functions to examine allegations of ethical and professional violations. On the other hand, the Supreme Court of the Netherlands (*Hoge Raad*) has full autonomy in carrying out its judicial functions, including supervising decisions from lower courts.<sup>12</sup> The presence of the Supreme Court as the highest court ensures that national legal standards are applied consistently.

International standards also play a significant role in shaping the constitutional framework for judicial independence in the Netherlands. The European Convention on Human Rights (ECHR), ratified by the Netherlands, is an important reference in establishing the principles of judicial independence. The European Court of Human Rights (ECtHR) has issued various decisions that have influenced legal reform in the Netherlands, ensuring that national law remains in line with international standards.

Meanwhile, in Indonesia, the constitutional framework for judicial independence is stated in the 1945 Constitution which explicitly states that the judicial power is independent and free from interference by other parties. Article 24 of the 1945 Constitution stipulates that judicial power is exercised by the Supreme Court and the judicial bodies below it, as well as the Constitutional Court. This provision is strengthened by Law No. 48 of 2009 concerning Judicial Power, which establishes the principle of judicial independence as the basic foundation in carrying out judicial functions. The Supreme Court of the Republic of Indonesia is the highest institution in the general judicial system, which has the authority to decide on cassation cases and supervise lower courts. The Constitutional Court has the authority to test laws against the 1945 Constitution and to decide on disputes over authority between state institutions. With these two institutions, the judicial system in Indonesia has a relatively strong structure to maintain the principle of independence.

To ensure the integrity of judges, Indonesia also has a Judicial Commission which is tasked with supervising the behavior of judges and recommending the appointment and dismissal of supreme court justices. The Judicial Commission is regulated in the 1945 Constitution and strengthened by related laws. Despite having broad authority, the Judicial Commission often faces challenges in carrying out its duties due to various political pressures and budget constraints.

### **3. The Impact of Legal Tradition on Judicial Independence and Lawmaking**

Legal systems around the world develop according to the history, culture, and legal traditions that apply in each country. In this context, the Netherlands and Indonesia offer an interesting comparative study because they have legal systems that developed from different traditional roots. The Netherlands adheres to the European continental legal system (civil law), while Indonesia has a mixed legal system that includes civil law, customary law, and Islamic law. These differences

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<sup>10</sup> Tin Bunjevac, “From Individual Judge to Judicial Bureaucracy: The Emergence of Judicial Councils and the Changing Nature of Judicial Accountability in Court Administration,” *The University of New South Wales Journal* 40, no. 2 (2017): 806.

<sup>11</sup> Paul P.T. Bovend’Eert, “Judicial Independence and Separation of Powers: A Case Study in Modern Court Management,” *European Public Law* 22, no. Issue 2 (April 1, 2016): 333–53, <https://doi.org/10.54648/EURO2016021>.

<sup>12</sup> Niels Graaf, “An Introduction to Dutch Legal Culture,” in *Handbook on Legal Cultures* (Cham: Springer International Publishing, 2023), 285–326, [https://doi.org/10.1007/978-3-031-27745-0\\_9](https://doi.org/10.1007/978-3-031-27745-0_9).

affect the formation of laws, the implementation of justice, and the degree of independence of legal institutions in both countries.

The Netherlands is a country that adheres to the European continental legal system based on written law (civil law). In this system, laws made by the legislature are the main source of law, while judges' decisions do not have the binding precedent force as in the common law system.<sup>13</sup> The main characteristic of the legal system in the Netherlands is a clear and detailed codification of the law. All legal regulations are set out in statutes, and judges are obliged to interpret and apply these laws consistently. The Dutch Supreme Court (*Hoge Raad*) plays an important role in ensuring that the law is applied uniformly throughout the country.

The legislative process in the Netherlands is very systematically organized. The Dutch Parliament (*Staten-Generaal*) has the main power to make laws, while the government implements the laws.<sup>14</sup> This system of checks and balances helps maintain legal stability and protects the independence of the judiciary. In addition, the influence of European law is also significant. As a member of the European Union, the Netherlands must comply with the laws issued by the European Union. The European Court of Human Rights (ECtHR) also has jurisdiction over the Netherlands in cases of violations of human rights set out in the European Convention on Human Rights (ECHR). As such, international standards influence the formation of national legislation and strengthen judicial independence in the Netherlands.

On the other hand, Indonesia has a unique legal system because it combines three main legal traditions: civil law inherited from the Dutch colonial period, customary law that developed according to local traditions, and Islamic law that influences family law and certain private laws.<sup>15</sup> Civil law in Indonesia mainly applies to criminal law, private law, and commercial law. The Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP) and the Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata) are legacies of the Dutch colonial era that are still used today with various modifications.

Customary law in Indonesia is very diverse, reflecting the pluralism of cultures and traditions in various regions. Some customary laws are recognized and applied in civil cases such as land disputes, inheritance, and family law. However, their application is often challenging due to the lack of codification and differences in practice in each region. Meanwhile Islamic law has an important position in the Indonesian legal system, especially in family matters such as marriage, divorce, and inheritance which are regulated by the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI). Religious courts have special jurisdiction to handle these cases. Furthermore, Indonesia's legal system is also influenced by international legal principles, especially after ratifying various human rights instruments such as the ICCPR and the United Nations Convention Against Corruption (UNCAC).

These differences in legal traditions have significant implications for judicial independence and the law-making process in the Netherlands and Indonesia. In the Netherlands, the civil law-based legal system ensures that the judiciary has a clear legal basis and detailed codification. Judges act as interpreters of the law and do not have the authority to make law through precedent. This creates a stable and consistent system in the application of the law. On the other hand, the influence of the

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<sup>13</sup> Rachmad Abduh and Ida Hanifah, "Certainty of Jurisdiction Law in Civil Law System," *Randwick International of Social Science Journal* 1, no. 2 (August 1, 2020): 120–25, <https://doi.org/10.47175/rissj.v1i2.52>.

<sup>14</sup> Bert van den Braak, "The Vitality of the Dutch Senate: Two Centuries of Reforms and Staying in Power," in *Reforming Senates* (Routledge, 2019), 173–87.

<sup>15</sup> Brian Z Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," in *Legal Theory and the Social Sciences* (Routledge, 2017), 447–83.

European Union strengthens legal accountability through international standards that must be followed.

In contrast, in Indonesia, the diversity of legal traditions creates its own challenges in maintaining legal consistency. Legal pluralism leads to differences in interpretation and application of the law in different regions.<sup>16</sup> In some cases, conflicts between customary law and national law create legal uncertainty that can undermine judicial independence. Furthermore, lawmaking in Indonesia is also often influenced by political dynamics.<sup>17</sup> Political intervention in the legislative process can affect judicial independence and create obstacles to more effective legal reform. In addition, the large number of regional regulations that conflict with national law indicate the need for better legal harmonization. However, efforts to strengthen the legal system in Indonesia continue to be carried out through legal reform, strengthening judicial institutions, and implementing international legal principles. By learning from the Dutch experience in maintaining the independence of judicial institutions and implementing international standards, Indonesia has the potential to improve the integrity of its legal system.

#### 4. Model of Judicial Organization

The organizational structure of the judiciary plays an important role in maintaining the independence of the judiciary in various countries. The Netherlands and Indonesia offer two different models of judicial organization according to their respective historical backgrounds and legal traditions. This comparison includes the system of judicial appointment, judicial administration, and the level of institutional autonomy granted to the courts.

The organizational structure of the judiciary in the Netherlands is characterized by the existence of the Council of the Judiciary (*Raad voor de Rechtspraak*), which has broad administrative and supervisory powers over the courts. This council is responsible for managing the budget, appointing judges, and ensuring that the quality of the judiciary is maintained.<sup>18</sup> The existence of the Council of the Judiciary allows for a high degree of institutional autonomy, so that the courts are not dependent on executive power. With this structure, the Netherlands is able to maintain a balance between administrative oversight and judicial independence.

Judges in the Netherlands are appointed through a strict selection process carried out by the Council of the Judiciary and then inaugurated by the King. This appointment is permanent until retirement age, unless the judge is proven to have committed a serious offense. This system guarantees stability and protection for judges from political interference. In administrative management, courts in the Netherlands have full authority to regulate administrative tasks, case distribution, and schedule hearings to maintain efficiency. In addition, the Dutch Supreme Court (*Hoge Raad*) plays an important role in ensuring the consistency of the application of national law. As the highest court, the Supreme Court supervises the decisions of lower courts and ensures that each decision is in line with applicable law. This oversight system is strengthened by international

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<sup>16</sup> Tody Sasmitha Jiwa Utama, “Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System,” *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 4, 2021): 269–89, <https://doi.org/10.1080/07329113.2021.1945222>.

<sup>17</sup> Marzuki Marzuki, “Towards Balanced Bicameralism: Reconstruction of Law-Making Powers in Indonesian Representative Institutions,” *Substantive Justice International Journal of Law* 5, no. 2 (October 18, 2022): 128, <https://doi.org/10.56087/substantivejustice.v5i2.187>.

<sup>18</sup> Frans Van Dijk and Geoffrey Vos, “A Method for Assessment of the Independence and Accountability of the Judiciary,” *International Journal for Court Administration* 9, no. 3 (December 19, 2018): 19, <https://doi.org/10.18352/ijca.276>.

standards implemented through the European Convention on Human Rights (ECHR), which was adopted by the Netherlands. Decisions of the European Court of Human Rights (ECtHR) are often used as a guideline in reforming the national legal system to keep it in line with global standards.<sup>19</sup>

In contrast, the organizational structure of the judiciary in Indonesia includes the Supreme Court, the Constitutional Court, and the Judicial Commission, which together ensure the fair implementation of the law. The Supreme Court is the highest court responsible for supervising the lower courts, including deciding cassation cases and supervising the implementation of law throughout Indonesia. The Constitutional Court has the authority to test laws against the 1945 Constitution and to decide on disputes over authority between state institutions. The existence of the Constitutional Court provides an additional dimension in ensuring the supremacy of law and the protection of citizens' constitutional rights. As a complement, the Judicial Commission plays an important role in supervising the ethics and behavior of judges and providing recommendations regarding the appointment and dismissal of supreme court justices.<sup>20</sup>

The process of appointing judges in Indonesia is strictly regulated to ensure transparency and accountability. Supreme Court judges are proposed by the Judicial Commission and selected by the People's Representative Council (*Dewan Perwakilan Rakyat* or DPR) before being officially appointed by the President. This model reflects a system of checks and balances between the various branches of government. However, despite having a strong structure on paper, the implementation of judicial functions in Indonesia often faces significant challenges. Political pressure, executive intervention, and corruption are major obstacles to maintaining the independence of the judiciary.<sup>21</sup> In addition, limited human resources and adequate court facilities also slow down the process of resolving cases.

In the administrative context, the Supreme Court of Indonesia has a dual role as the highest court and administrator of the judiciary. This creates a significant administrative burden. To address this problem, a number of reforms have been carried out, such as the establishment of special courts and electronic courts to speed up the legal process. Furthermore, the Judicial Commission in Indonesia also faces challenges in carrying out its functions. In addition to budget constraints, the lack of executive authority reduces the effectiveness of this institution in prosecuting ethical violations by judges. The recommendations of the Judicial Commission are often ignored by other government institutions, reflecting the need for better harmonization in the judicial system.

## 5. Application of the Principle of Material Truth

The principle of material truth is one of the important foundations in the criminal justice system, which emphasizes the search for substantial truth in every legal process. This principle demands that court decisions reflect the factual reality of a case, not merely based on legal formalities. Both the Netherlands and Indonesia adopt this principle in their justice systems, although with different approaches and implementations.

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<sup>19</sup> Roel de Lange, "Judicial Independence in The Netherlands," in *Judicial Independence in Transition*, ed. Anja Seibert-Fohr (Springer Berlin Heidelberg, 2012), 231–72, [https://doi.org/10.1007/978-3-642-28299-7\\_7](https://doi.org/10.1007/978-3-642-28299-7_7).

<sup>20</sup> Hari Purwadi et al., "Resolving the Judiciary Tensions between the Constitutional Court and the Supreme Court of Indonesia," *Journal of Indonesian Legal Studies* 9, no. 1 (May 9, 2024): 317–52, <https://doi.org/10.15294/jils.vol9i1.4635>.

<sup>21</sup> Nazhif Ali Murtadho, "Paradigm for the Recruitment of Supreme Court Judges by the House of Representatives Is Part of Constitutional Political Intervention," *Journal of Law, Politic and Humanities* 4, no. 4 (May 20, 2024): 462–80, <https://doi.org/10.38035/jlph.v4i4.394>.

## 5.1 Application of the Principle of Material Truth in the Criminal Justice System in the Netherlands

The Dutch criminal justice system is rooted in the European continental legal tradition, which places great emphasis on the application of the principle of material truth at every stage of the legal process. Judges in the Netherlands play an active role in seeking the truth in criminal cases. They do not only serve as passive arbiters, but also as directors of the investigation and evidence collection process. In practice, Dutch judges have broad powers to examine the evidence presented by the public prosecutor or the defense. They can also order additional investigations if they feel that the evidence is insufficient to make a fair decision. In this context, judges are not bound by formal evidence alone, but can consider all relevant aspects to find the material truth.<sup>22</sup>

One of the important mechanisms in the Dutch legal system is the use of open and contradictory hearings. This allows all parties involved to present evidence and present their arguments before the judge. The principle of *audi et alteram partem* (hear both sides) is strictly applied to ensure that all evidence and testimony are considered fairly.<sup>23</sup> Court decisions in the Netherlands must also be based on conviction obtained through strong evidence. If there is a reasonable doubt about the guilt of the accused, the judge is obliged to rule in the interests of the accused in accordance with the principle in *dubio pro reo*.<sup>24</sup> Thus, the Dutch criminal law system prioritizes the search for material truth as a means to achieve substantive justice. On the other hand, Dutch criminal law is also influenced by international standards, such as the European Convention on Human Rights (ECHR). Dutch courts often refer to decisions of the European Court of Human Rights in interpreting the principle of material truth, thus ensuring that its application remains in line with global norms.

## 5.2 Implementation of the Principle of Material Truth under Indonesian Criminal Procedure Law

In Indonesia, the application of the principle of material truth is regulated in the Criminal Procedure Code (KUHAP). Article 183 of the KUHAP stipulates that a judge cannot sentence a defendant unless there are at least two valid pieces of evidence and the judge is convinced that the crime actually occurred. In this context, the principle of material truth guides judges not to only focus on formal evidence presented during the trial, but also to consider all facts that emerge in the legal process. Judges have an obligation to dig as deep as possible for the truth to ensure that their decisions reflect the actual reality.<sup>25</sup>

However, the implementation of this principle in Indonesia faces a number of challenges. One of the main obstacles is the legal culture that is still often tied to a legal-formal approach, where judges tend to only consider evidence that is formally presented in court. Limited investigative

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<sup>22</sup> Bart Custers and Lonneke Stevens, “The Use of Data as Evidence in Dutch Criminal Courts,” *European Journal of Crime, Criminal Law and Criminal Justice* 29, no. 1 (April 13, 2021): 25–46, <https://doi.org/10.1163/15718174-bja10015>.

<sup>23</sup> Stefano Ruggeri, “Audi Alteram Partem in Criminal Proceedings Under the European Convention on Human Rights,” in *Audi Alteram Partem in Criminal Proceedings* (Cham: Springer International Publishing, 2017), 293–344, [https://doi.org/10.1007/978-3-319-54573-8\\_8](https://doi.org/10.1007/978-3-319-54573-8_8).

<sup>24</sup> Adriano Martufi, Kelly Pitcher, and Jannemieke Ouwkerker, “The Netherlands,” in *Effective Protection of the Rights of the Accused in the EU Directives*, ed. Giuseppe Contissa et al. (Brill | Nijhoff, 2022), 207–26, [https://doi.org/10.1163/9789004513396\\_014](https://doi.org/10.1163/9789004513396_014).

<sup>25</sup> Sepriandison Saragih and Sri Endah Wahyuningsih, “Reconstruction of Criminal Offender Arrest by Investigators Based on Justice Values,” *South East Asia Journal of Contemporary Business, Economics and Law* 20, no. 5 (2019): 82–88.

capacity and high workloads also limit the ability of judges to conduct in-depth investigations. In addition, corruption and political intervention often hinder the application of the principle of material truth in Indonesia.<sup>26</sup> Several cases show that court decisions can be influenced by pressure from certain parties, thereby reducing the independence of judges in seeking the truth.

To strengthen the implementation of this principle, Indonesia has undertaken a number of legal reforms, including the establishment of institutions such as the Judicial Commission and the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* or KPK). Both institutions play a role in overseeing the performance of judges and eradicating corrupt practices that disrupt the judicial process. Besides, the role of the Constitutional Court is also significant in maintaining the implementation of the principle of material truth in Indonesia. Through its authority to test laws against the 1945 Constitution, the Constitutional Court can annul legal provisions that are deemed to violate the principles of justice and human rights.<sup>27</sup>

## 6. The Influence of International Standards

International standards play an important role in shaping the rule of law in various countries, especially in terms of judicial independence and the protection of human rights. Both the Netherlands and Indonesia are influenced by various international legal instruments, although with different levels of implementation. A comparison between the two countries in adopting international standards can provide insight into how global norms can strengthen national legal systems.

### 6.1. The Role of the European Convention on Human Rights (ECHR) in Shaping the Rule of Law in the Netherlands

The Netherlands is an active member of the Council of Europe and has ratified the European Convention on Human Rights (ECHR). The ECHR is one of the most important international legal instruments that influences the Dutch legal system, especially in ensuring the independence of the judiciary and protection against human rights violations. Article 6 of the ECHR regulates the right to a fair trial, which includes the right to an independent, impartial and legally constituted tribunal. Courts in the Netherlands are legally bound to comply with this provision, and decisions of the European Court of Human Rights (ECtHR) have binding legal force for the Dutch legal system.

For example, ECtHR decisions in several cases involving the Netherlands have led to changes in national law. One notable case was *Van de Hurk v. Netherlands*, in which the ECtHR ruled that the administrative courts in the Netherlands did not meet the independence standard due to the potential for government intervention.<sup>28</sup> This decision prompted reforms in the administrative court system in the Netherlands to ensure a clearer separation of executive and judicial powers. In addition, the ECHR's influence is evident in the regulation of the appointment and dismissal of judges in the Netherlands. Judges cannot be dismissed without a clear and transparent legal process, in accordance with the standards set by the ECHR. This creates strong legal protection against potential abuse of power by the government. The ECtHR's role as a watchdog over the

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<sup>26</sup> Febby Mutiara Nelson and Topo Santoso, "Plea Bargaining in Corruption Cases: A Solution for the Recovery of Financial Losses by Indonesia?," *Pertanika Journal of Social Sciences & Humanities* 28, no. 2 (2020): 1238.

<sup>27</sup> Mohammad Ibrahim, "The Judicialisation of Discrimination in the Indonesian Constitutional Court," *International Journal of Discrimination and the Law* 22, no. 2 (June 3, 2022): 125–51, <https://doi.org/10.1177/13582291221094923>.

<sup>28</sup> Roel De Lange and Paulus Antonius Maria Mevis, "Constitutional Guarantees for the Independence of the Judiciary," *Electronic Journal of Comparative Law* 11, no. 1 (2016): 3.



implementation of the ECHR also motivates the Dutch government to continually update domestic law to comply with international standards. These standards ensure that the courts in the Netherlands remain independent, transparent and impartial.

## **6.2. Potential for Implementing International Standards in Indonesia to Strengthen Judicial Independence**

Indonesia has great potential to strengthen judicial independence through the application of relevant international standards. Although Indonesia is not a member of the Council of Europe and is not subject to the ECHR, it has ratified various international legal instruments relating to human rights, such as the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Corruption (UNCAC). Article 14 of the ICCPR, which regulates the right to a fair trial and an independent judiciary, has important relevance for Indonesia. By ratifying the ICCPR, Indonesia is legally bound to ensure that the courts must be free from executive and legislative interference. Although in practice, the implementation of this principle still faces many challenges, the existence of the ICCPR can provide a strong legal basis for judicial reform.

In addition, the UN Human Rights Committee, which monitors the implementation of the ICCPR, can provide morally binding recommendations to the Indonesian government.<sup>29</sup> Some important recommendations that have been issued include the need to strengthen the protection of judges from political interference and ensure a more transparent process for the appointment of judges. Indonesia can also learn from the Dutch legal system in adopting international standards to improve domestic legal arrangements. The establishment of the Judicial Commission in Indonesia reflects an effort to apply international standards in overseeing the ethics and behavior of judges. In the regional context, Indonesia can also use its membership in ASEAN to push for the establishment of a stronger human rights protection mechanism. The potential for developing this regional framework can support Indonesia's efforts to strengthen its judicial system.

## **7. Conclusion**

This study confirms that the principle of judicial independence is an essential element in ensuring the rule of law and democracy in various countries, including Indonesia and the Netherlands. Although both countries share a commitment to this principle, their approaches reflect fundamental differences in legal traditions, institutional structures, and socio-political influences. The Dutch legal system, rooted in the continental civil law tradition, is supported by a strong administrative structure, a rigorous judicial selection mechanism, and the influence of international standards such as the ECHR. Meanwhile, Indonesia faces more complex challenges due to the influence of legal pluralism, involving customary law, Islamic law, and colonial heritage, as well as obstacles to judicial oversight due to corruption and political intervention.

In the Netherlands, the existence of the Judicial Council (Raad voor de Rechtspraak) provides significant institutional autonomy to the judiciary, ensuring that the judicial function is free from executive and legislative pressure. In contrast, although Indonesia has established a Judicial Commission to oversee the conduct of judges, this institution often faces limitations, both in terms of authority and resources. In the context of international legal harmonization, the Netherlands has

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<sup>29</sup> Ivana Jelić and Linus Mührel, "The Human Rights Committee—Challenges and Prospects for Enhanced Effectiveness and Integration," *Journal of Human Rights Practice* 14, no. 1 (September 26, 2022): 17–43, <https://doi.org/10.1093/jhuman/huac026>.

succeeded in integrating international standards into its national system, strengthening accountability and legal consistency. Indonesia, despite having ratified several international instruments such as the ICCPR and UNCAC, still needs to improve the implementation of these principles to address structural and institutional weaknesses in its judicial system.

Through this comparative analysis, Indonesia can learn from the Netherlands' experience in adopting international standards and building a solid administrative structure. The importance of ongoing legal reform, enforcement of judicial ethics, and application of global standards are the main recommendations of this study. Thus, this article not only provides academic contributions in the field of comparative law but also offers practical insights for policymakers to create a more independent, fair, and effective judicial system in Indonesia. Such reforms are expected to encourage the creation of more equitable substantive justice and strengthen public trust in judicial institutions.