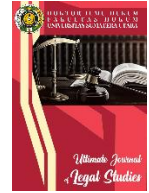




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# The Harmonization of Judicial Status: Urgency of the Draft Law on the Magistracy in Affirming Judges as State Officials and Its Impact on Judicial Human Resource Management

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### ABSTRACT

*The affirmation of judges status as state officials in the Draft Law of the Magistracy (RUU Jabatan Hakim) constitutes an urgent constitutional measure to strengthen the independence of judicial power in Indonesia. Although Law No. 48 of 2009 has explicitly recognized judges as state officials, in practice this status continues to overlap with the civil service regime. This dualism has created structural problems that undermine judicial independence, as judges remain bound by career patterns, salary systems, and disciplinary mechanisms under executive control. This normative legal research aims to analyze the urgency of affirming judges pure status as state officials and to formulate the concept of a complete separation from the Civil Service system. The findings indicate that recognizing judges as state officials would provide stronger legal protection, ensure autonomy in appointment and promotion, and establish a sui generis career system based on competence and integrity. The Draft Law on the Judiciary is expected to create an independent judicial personnel system encompassing proportional regulations on salaries, allowances, and pensions in line with the dignity of the judicial office. However, judicial independence must be balanced with accountability through transparent ethical and technical oversight by the Supreme Court and the Judicial Commission. Therefore, the formulation of the Draft Law on the Judiciary represents not merely an administrative reform, but a fundamental effort to uphold the independence of judicial power as mandated by Article 24 of the 1945 Constitution, and to reinforce public trust in the judiciary as the ultimate guardian of justice.*

**Keyword:** Civil Servant, Dualism, Draft Law of the Magistracy Judges, State Officials

### ABSTRAK

Afirmasi status hakim sebagai pejabat negara dalam Rancangan Undang-Undang Jabatan Hakim merupakan langkah konstitusional yang mendesak untuk memperkuat kemerdekaan kekuasaan kehakiman di Indonesia. Meskipun Undang-Undang Nomor 48 Tahun 2009 telah menegaskan bahwa hakim merupakan pejabat negara, dalam praktiknya status tersebut masih tumpang tindih dengan rezim kepegawaian Pegawai Negeri Sipil. Dualisme ini menimbulkan problem struktural yang berimplikasi pada menurunnya independensi yudisial, karena hakim tetap terikat pada pola karier, sistem penggajian, dan mekanisme disiplin di bawah kendali eksekutif. Penelitian hukum normatif ini bertujuan menganalisis urgensi afirmasi status pejabat negara murni bagi hakim serta merumuskan konsep pemisahan total dari sistem Aparatus Sipil Negara. Hasil penelitian menunjukkan bahwa status hakim sebagai pejabat negara akan memberikan perlindungan hukum yang lebih kuat, menjamin otonomi dalam pengangkatan dan promosi, serta membangun sistem karier sui generis berbasis kompetensi dan integritas. Rancangan Undang-Undang Jabatan Hakim diharapkan menciptakan sistem kepegawaian yudisial yang independen, meliputi pengaturan gaji, tunjangan, dan pensiun yang proporsional dengan martabat jabatan. Namun, penguatan independensi harus diimbangi dengan akuntabilitas melalui pengawasan etik dan teknis yang transparan oleh Mahkamah Agung dan Komisi Yudisial. Dengan demikian, pembentukan Rancangan Undang-Undang Jabatan Hakim bukan sekadar reformasi administratif, melainkan upaya



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fundamental untuk menegakkan kemerdekaan kekuasaan kehakiman sebagaimana diamanatkan Pasal 24 UUD 1945 serta memperkuat kepercayaan publik terhadap lembaga peradilan sebagai benteng terakhir keadilan.

**Keyword:** Dualisme, Hakim, Pegawai Negeri Sipil, Pejabat Negara, RUU Jabatan Hakim.

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## 1. Introduction

The affirmation of the status of judges as State Officials in the Draft Law of the Magistracy ("RUU JH") is a necessity to strengthen the independence of the judicial power (Rancangan Undang-Undang Jabatan Hakim, 2016). The status of pure state officials will provide more adequate legal protection for judges in carrying out their noble duties. With this clear status, extrajudicial intervention that undermines the dignity and nobility of judges is expected to be minimized. The urgency of the Judicial Review Bill is also based on the need to follow up on several Constitutional Court decisions that affirmed the status of judges as state officials (Nope et al., 2025). Although Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman ("Undang-Undang Kekuasaan Kehakiman") refers to judges as state officials, its implementing regulations still frequently refer to the Civil Servant employment system. The RUU JH aims to eliminate this normative contradiction and provide legal certainty.

The current dualism of status has a negative impact on the independence of judges because the bureaucratic and salary systems inherent to civil servants are very vulnerable to structural intervention (Novriandi et al., 2022). When judges remain tied to civil servant career patterns and rank, their decision-making autonomy and freedom to exercise their judicial functions can be threatened. Therefore, affirming their status as state officials primarily aims to guarantee the independence of judges. The significant implications of affirming their status as pure state officials are evident in the recruitment and career patterns of judges (Hartono, 2017). Recruitment patterns can no longer follow the rank/class-based civil servant mechanism, but must instead be formulated into a new system that aligns with the specificities of judicial positions. This requires clear regulations regarding the appointment of judges, distinct from the civil servant selection process.

Furthermore, the status of state officials will eliminate the current civil servant rank-and-class career system. This requires the development of a separate career system for judges, similar to that in the military or police. The judicial hierarchy must be designed to encourage professionalism and experience, not simply administrative promotion. The affirmation of judges as pure state officials will result in the elimination of the rights and obligations inherent in civil servant status, such as allowances and pensions regulated under the civil servant regime. The RUU JH must establish a specific, robust, and comprehensive system of civil servant rights and obligations for judges in the judicial sector. This regulation must include salaries, pensions, and allowances commensurate with the dignity of the position.

While aiming to strengthen independence, the status of state officials must be balanced with a strict and specific system of accountability and oversight. The Undang-Undang Kekuasaan Kehakiman must establish an effective oversight mechanism, encompassing oversight of judicial technicalities, performance assessments, and oversight of judicial behavior. A balance between independence and accountability is key to achieving a clean judiciary. The core of this status harmonization is the creation of a clear, transparent, and professional judicial personnel management system. This system must encompass everything from appointment requirements and performance patterns to disciplinary enforcement and guarantees for the welfare of judges. The ultimate goal is to establish a system that ensures the integrity and quality of case decision-makers.

Furthermore, the RUU JH must explicitly and systematically formulate the mechanism for appointing and dismissing judges as state officials. This is crucial to eliminate ambiguity and potential discretion in future appointment processes. Furthermore, it must regulate the employment consequences following a judge's dismissal (Idul, 2016). Adequate welfare guarantees are an integral part of the proposed status of civil servants. Adequate welfare can act as a bulwark for judges against the temptation of bribery and gratuities, which in turn will enhance professional integrity. This arrangement should be separate from the civil servant salary system to strengthen the judges' financial independence.

Furthermore, the status of state officials also carries the consequence of stronger legal protection for judges in carrying out their judicial functions. The Undang-Undang Kekuasaan Kehakiman must regulate legal protection mechanisms against threats, intimidation, or interference from external parties. This protection is essential so that judges can decide cases courageously, objectively, and without fear. Developed countries such as Germany, Singapore, and Japan have regulated the position and profession of judges in separate laws. These countries position the profession of judge as an honorable and independent profession, providing a foundation for Indonesia to do the same. The standard and centralized regulation in the Law on the Position of Judges represents international best practice.

The discussion of the Draft Law on Judicial Positions involved the active participation of the House of Representatives' Expertise Body and input from the Supreme Court ("MA") and the Judicial Commission ("KY"). This collaboration is crucial to ensure that the substance of the Draft Law on Judicial Positions addresses the practical and academic needs of upholding the dignity of judges. Legislative support is crucial for the inclusion of the Draft Law on Judicial Positions in the National Legislation Program (Prolegnas). Therefore, the Draft Law of the Magistracy is an urgent need to resolve the dual status of judges and strengthen the judicial system in Indonesia. Affirming judges as State Officials will create a clear judge management system and encourage the independence, honor, and nobility of the judicial profession. The ratification of this bill is expected to bring a judiciary with greater integrity and public trust. Therefore, this paper examines how the affirmation of judges' status as state officials in the Draft Law of the Magistracy can strengthen the independence of the judiciary and eliminate the dual status of judges as Civil Servants.

## **2. Method**

This research uses a normative legal research method (legal research), which is a type of research that explores and examines law as a norm or main rule in a system of written positive legal regulations. The author also uses secondary material in the form of supporting data regarding the description of the magistracy through the Draft Law on the Magistracy.

## **3. Result and Discussion**

### **3.1 Judges Judicial Status within Three Legal Frameworks**

The status of judges as state officials in Indonesia is firmly grounded in the Law on Judicial Power. More explicitly, the definition of judges as state officials is stipulated in the Law on Judicial Power, which affirms that judges and constitutional judges are state officials who exercise judicial power (Rancangan Undang-Undang Jabatan Hakim, 2016). This status as a state official fundamentally aims to strengthen the independence of judges and judicial institutions from executive intervention. As holders of judicial power, judges must be free from political and government bureaucratic influence to ensure justice and uphold the law based on conscience without fear.

As a consequence of their position as state officials, judges should be accorded a separate protocol status, regulated in accordance with statutory provisions. Furthermore, they are entitled to a basic salary, allowances, service costs, pensions, and other distinct and specifically regulated rights, demonstrating recognition of the strategic and noble role of the position (Haris, 2017). Hakim sebagai pejabat negara diberikan jaminan keamanan yang memadai dalam melaksanakan tugasnya, baik both inside and outside the courtroom. This guarantee is essential considering the risks and challenges judges face when deciding cases, especially sensitive cases or those involving significant interests, so that the integrity of the decision is not compromised by threats.

In Indonesia, a unique situation has emerged where judges, despite their status as state officials, are in practice still tied to and attached to their civil servant status. Most judges are appointed through the civil servant recruitment process and are subject to the personnel regime regulated by Undnag-Undang Nomor 20 Tahun 2023 Tentang Aparatur Sipil Negara. The current judicial career system still largely adopts the civil servant promotion and classification pattern (Undang-Undang Nomor 20 Tahun 2023 Tentang Aparatur Sipil Negara, 2023). Judges are the only state officials whose career path (including promotions and ranks) is structured

hierarchically through this civil service system, in contrast to other state officials whose appointments are generally periodic and political.

The determination of the status of state officials also impacts the process of recruiting judges. There is debate that recruitment of state officials, unlike civil servants, should not be entirely carried out by the government (executive) (Haris, 2019). This created a legal vacuum in the recruitment of new judges, underscoring the importance of a harmonious and specific regulation. The attachment of judges to the civil service regime has consequences for their civil service rights and obligations. Rights such as allowances and pensions, as well as the obligations and disciplinary system for judges, are largely still regulated by the Government Regulation on Civil Servant Salaries and Discipline, even though the rights and obligations of state officials in the judicial sector should have their own separate system.

This dual status creates regulatory conflict, where on the one hand, judges hold independent judicial power, but on the other, they are bound by bureaucracy and personnel administration regulated by the executive branch. This is feared to diminish the independence of judges in terms of personnel development and administration. The drafting of the Judicial Review Bill (RUU JH) is crucial to addressing this disharmony. The goal is to eliminate civil servant status for judges and establish a *sui generis* (special) personnel system for judicial officials, similar to that implemented in the Indonesian National Armed Forces (TNI) or the Indonesian National Police (POLRI), to strengthen independence.

The fundamental dilemma facing judges is the clash between demands for independence from state offices and the bureaucratic ties of civil servants. The argument for pure state official status is a complete severance of civil service ties with the executive branch to guarantee judges' freedom from bureaucratic interference, whether in recruitment, transfer, or administrative sanctions. State official status provides a high degree of functional immunity that must be balanced with strong accountability. There is a dilemma in determining the boundaries between the judge's freedom to make decisions (judicial independence) and the obligation to be responsible for behavior and ethics (behavioral accountability), which is overseen by the Judicial Commission and the Supreme Court.

Furthermore, in today's digital era, judges face a new ethical dilemma, namely how to maintain the neutrality and authority of judicial institutions amidst demands for open information (Gultom, 2017). The code of ethics requires judges to limit their social interactions and digital footprints, even though society demands transparency. Striking a balance between total privacy and public accountability is challenging. When deciding cases, especially criminal cases, judges face a humanitarian dilemma. They must apply the law normatively, but at the same time, they must consider the social and psychological impact of the decision on the defendant and their family. This psychological pressure, combined with a high workload, often becomes a daily reality rarely seen by the public.

Another dilemma arises in the context of judicial activism and judicial restraint. Judges are required not to reject cases (Article 10 of the Judicial Power Law) and must explore the legal values entrenched in society that could encourage judicial activism (Haris, 2017). However, excessive activism is feared to violate the principle of separation of powers and threaten legal certainty, so judges must walk a fine line of balance.

Ultimately, the position of judges as state officials in Indonesia reflects a constitutional effort to uphold the independence of the judiciary as a key pillar of the rule of law. However, the reality of the dual status of state officials and civil servants demonstrates that this ideal still faces structural and normative challenges. The disharmony between the principle of judicial independence and the bureaucratic civil service system demands comprehensive institutional reform, one of which is through the establishment of an independent and unique (*sui generis*) judicial civil service system. This reform is expected to not only emphasize the separation of judges from executive influence but also strengthen the accountability and integrity of the judiciary amidst ever-changing social dynamics and technological developments. Thus, the status of judges as state officials will truly serve as a strong foundation for upholding justice, judicial independence, and public trust in the judiciary.

### **3.2 The Practical Impact of Civil Servant Status on Judicial Independence**

The most significant impact of civil servant status is the binding of judges to a career development system that

has historically and administratively been under executive control (through the Menteri Pendayagunaan Aparatur Negara dan Reformasi Birokrasi Republik Indonesia/KemenPAN-RB and the Badan Kepegawaian Negara/BKN). Although the Supreme Court is now the operator, its basic regulations still refer to the civil servant regime. Although judges have the status of state officials, their salary and basic allowance systems still refer to the Government Regulation on Civil Servant Basic Salaries. This results in judges compensation packages not always specifically reflecting the burden, risks, and dignity of judicial office, potentially diminishing the attractiveness and dignity of independence (Muqorobin, 2025).

Furthermore, the process of transfer, rotation, and promotion of judges, although carried out by the Supreme Court, must comply with the civil service regulations applicable to civil servants. If not strictly and transparently regulated, adherence to this regime opens up opportunities for subjectivity in placements. Judges may feel the need to maintain good relationships with their administrative superiors to ensure their careers progress, which can subtly threaten judicial independence. Judges must complete various documents and reports commonly used in civil servant performance management, such as Employee Performance Targets or even attendance reports (Novianti, 2016). This administrative burden can divert judges' focus from their core judicial duties, namely deciding cases with the highest quality, and instead prioritize fulfilling bureaucratic requirements.

In addition, civil servants make judges subject to two disciplinary supervision regimes, namely the Code of Ethics and the Guidelines for Judges Conduct, which were jointly drawn up by the KY and MA (Keputusan Bersama Ketua Mahkamah Agung Dan Ketua Komisi Yudisial Tentang Kode Etik Dan Pedoman Perilaku Hakim, 2009), and the Civil Servant Disciplinary Regulations by the Supreme Court as the direct superior. This dualism can lead to confusion and overlapping sanctions, even though sanctions for judicial officials should be regulated *sui generis*. Furthermore, judges recruited and trained within the civil service tend to have a rigid bureaucratic mindset, emphasizing hierarchical and procedural compliance, rather than a judicial mindset that should be independent, creative in exploring the law, and bold in making unpopular decisions.

Regulations regarding leave, permits, and attendance for judges are still the same as for civil servants in general. Yet, judicial duties often require a high degree of flexibility, especially when handling urgent cases. This mismatch can disrupt the smooth running of the judicial process. Furthermore, the judges' pension system is still integrated with the civil servant pension system. This pension scheme is considered disproportionate to the risks, responsibilities, and lofty status of judicial state officials, who should receive better pension benefits as a form of state recognition.

The recruitment process for prospective judges, which is similar to that for prospective civil servants, often fails to fully accommodate the specific requirements for judicial competence and integrity. The general civil servant selection requirements and stages do not sufficiently examine the character traits required to become an independent judge with high integrity (Hanapi, 2019). The salaries and allowances of judges as civil servants are distributed through the personnel expenditure budget proposed by the government (executive). Reliance on this budget mechanism can indirectly act as a bargaining chip that limits demands for overall judicial budget independence.

Furthermore, civil servant status hinders efforts to enact the Undang-Undang Kekuasaan Kehakiman, which would create a judicial civil service system entirely separate from the executive branch. As long as civil servant status remains, efforts to de-bureaucratize the judiciary will remain stymied. In the public eye, judges civil servant status can create a negative perception of their independence. The public may view judges as ordinary government employees, rather than as independent pillars of state power, thus eroding public trust in judicial institutions.

It is also undeniable that if a judge with high integrity issues an unpopular decision or one that is detrimental to the interests of a particular power, civil servant status opens the potential for manipulation through personnel administration mechanisms, for example, through delays in promotions or transfers to remote areas. Within the civil servant framework, there is the possibility of judges being transferred or placed in non-judicial positions within the Supreme Court (for example, in technical directorates or secretariats). Even within the judicial environment, this placement can disrupt the focus and core career path of an independent law enforcer. Although the Supreme Court is a state institution, the technical personnel regulations issued by the BKN and KemenPAN-RB remain legally binding on the Supreme Court as an agency that uses civil servants. This

creates technical control of the executive bureaucracy over human resource management in the judiciary (Annisa, 2017). Thus, the practical impact of civil servant status on judges as a whole is the weakening of judicial independence from an administrative and bureaucratic perspective. The complete separation of judges from the civil servant regime and their designation as pure state officials with a *sui generis* (special) judicial civil service system is a crucial step towards realizing absolute and unimpeded judicial independence.

Therefore, the status of judges as part of the civil servant regime has a systemic impact that reduces the independence of the judicial power. Their attachment to the executive civil service structure and regulations makes judges vulnerable to bureaucratic influences that should be outside the judicial realm. This dependence not only affects administrative aspects and welfare but also touches on the ethical and psychological realms in the implementation of judicial duties. Therefore, the complete separation of judges from the civil service system through the establishment of a *sui generis* judicial civil service system is a strategic and constitutional step to restore the independence of the judicial power as mandated by Article 24 of the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. This reform is not merely a matter of institutional status, but rather the foundation for creating an independent, authoritative, and publicly trusted judiciary as the last bastion of justice.

### **3.3 Towards an Independent Judicial Office: A Concept for Resolving Dilemmas**

The main dilemma in the status of judges in Indonesia lies in the incongruity between their formal status as state officials (holders of judicial power) and their practical attachment to the civil service regime. This dualism conflict is the biggest structural obstacle to the realization of absolute judicial independence (Novriandi et al., 2022). The RUU JH is the most fundamental legislative instrument to resolve this dilemma. Its goal is to eliminate civil servant status for judges and establish a *sui generis* (special) personnel regime for judicial positions, guaranteeing the Supreme Court's full autonomy in managing judicial human resources.

The solution to this dilemma begins with the concept of a complete separation of the civil service regime. The Judicial Review Bill must explicitly state that judges are state officials, not civil servants, freeing them from the ASN Law and all its bureaucratic-executive derivative regulations. The concept of independence demands that the Supreme Court have full autonomy in the judicial appointment process. The Judicial Review Bill must regulate specific, transparent, and integrity-focused recruitment procedures for prospective judges, without being tied to quotas or general CPNS selection procedures regulated by the executive branch (BKN/KemenPAN-RB).

The RUU JH aims to establish a judicial career system distinct from the civil service rank and class system. The new system should be based on competence, experience, and judicial performance, rather than bureaucratic hierarchy, so that judicial promotions are based on the quality of decisions and integrity. Within the framework of the RUU JH, the authority to transfer and promote judges should rest entirely with the Supreme Court (through its subordinate Judicial Bodies) without potential intervention or audit by executive personnel agencies. This ensures that the placement of judges cannot be used as a tool of control or non-judicial sanctions.

The JH Bill must establish a specific and appropriate compensation scheme (salary, allowances, and facilities) for judicial state officials. This compensation must be higher and regulated through a separate regulation, not the government regulations on Civil Servant Salaries, as a form of state recognition of the dignity and risks of the position. Therefore, the status of civil servants allows the JH Bill to design a much more appropriate pension entitlement, comparable to that of other high-ranking state officials. This post-service welfare guarantee is crucial to prevent judges from being tempted to seek non-procedural benefits while in office. It is also possible that the JH Bill could propose the establishment of a Judicial Independence Allowance or similar, which explicitly recognizes and provides compensation for the social and ethical isolation that judges must adhere to in order to maintain neutrality and dignity.

Furthermore, the RUU JH must clearly synchronize the role of the KY in overseeing behavior/ethics and the MA in technical and administrative oversight. Resolving this dual oversight dilemma would eliminate overlap with the Civil Servant Disciplinary Regulations. One solution to this dilemma is to strengthen the KY's role in the initial selection and appointment of prospective judges, so that the KY not only oversees behavior but also ensures quality and integrity from the outset. It is also possible that the RUU JH could adopt higher, more

detailed, and more adaptive ethical standards to address modern challenges (such as digital and social media ethics), clearly distinguishing the obligations of judges from the ethical standards of ordinary civil servants..

However, the implementation of the RUU JH faces significant challenges, particularly bureaucratic resistance from executive institutions that currently manage personnel (BKN/KemenPAN-RB) and the tug-of-war of interest within the House of Representatives (DPR) during the legislative process. The concept of independent judicial positions requires a significant increase in the Supreme Court's budget allocation, not only for compensation but also for human resource management systems, education, and facilities to support independence. The Judicial Review Bill must formulate a fair and clear transition mechanism for the thousands of judges currently serving as civil servants. This transition includes adjustments to pension and other civil service entitlements.

Separation from the ASN regime demands a total change in the curriculum and methods of educating prospective judges, which must focus on the values of independence, judicial integrity, and legal discovery, not on bureaucratic compliance (Hartono, 2017). As independent state officials, the Judicial Review Bill must strengthen security guarantees (physical and legal protection) for judges and their families, especially when handling high-stakes cases. Ultimately, the Judicial Review Bill and the concept of resolving this dilemma are a concrete manifestation of the mandate of Article 24 of the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 to realize the independence of the judiciary. An independent judicial office, free from bureaucracy, is an absolute prerequisite for producing fair and impartial decisions and restoring public trust in the judiciary.

Thus, the dilemma of the status of judges in Indonesia can only be resolved through comprehensive structural reform, as proposed in the Draft Law of the Magistracy. The complete separation of judges from the civil service regime is not merely an administrative matter, but a constitutional step to ensure the independence of the judiciary, as mandated by Article 24 of the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. The Draft Law of the Magistracy is expected to be a milestone in establishing an independent, professional, and integrity-based judicial staffing system, so that judges are no longer bound by the executive bureaucratic hierarchy. Although its implementation faces political and bureaucratic challenges, the courage to assert the independence of the judicial office is an absolute requirement for the realization of a free, dignified, and substantive justice-oriented judiciary. Ultimately, this reform is not merely about institutional status, but about rebuilding public trust in the judiciary as the ultimate guardian of justice and the rule of law.

#### **4. Conclusion.**

The constitutional status of judges in Indonesia as state officials is intended to guarantee judicial independence and strengthen the judiciary as a pillar of judicial power. However, in reality, most judges remain tied to the Civil Service regime, creating a structural conflict between judicial independence and bureaucratic compliance. This dual status impacts administrative aspects, welfare, disciplinary oversight, and career processes, which can practically reduce judicial independence and affect the quality of decisions. Structural reform through the creation of the Judicial Service Law (RUU JH) is crucial to addressing this dilemma. The RUU JH aims to completely separate judges from the civil service regime, create a sui generis judicial personnel system, establish independent and specific mechanisms for recruitment, promotion, transfer, compensation, and supervision, and provide security and welfare guarantees commensurate with the risks of the position. This separation is not merely an administrative issue, but a constitutional step to ensure the independence of the judiciary, strengthen the integrity and professionalism of judges, and restore public confidence in the judiciary. Thus, judicial independence can only be achieved through structural reform that breaks ties with the executive bureaucracy, establishes an independent judicial personnel system, and affirms the status of judges as independent state officials.

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