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**The Dynamics of Checks and Balances in the New Administration: Safeguarding the Integrity of the Judiciary in Achieving Substantive Justice**

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**ABSTRACT**

This research examines the critical tension between executive expansion and judicial independence within the context of the 2024 general elections and the emergence of new administrations globally and in Indonesia. Utilizing a normative-legal and comparative approach, the study analyzes the phenomenon of "autocratic legalism," where legal instruments are strategically repurposed to consolidate political power, thereby threatening the traditional framework of checks and balances. The findings indicate a significant global regression in democratic standards, with a 67% "fatality rate" for autocratizing democracies and a measurable decline in judicial constraints on executive power in 61% of nations. In Indonesia, the 2024 transition highlighted structural vulnerabilities in the Constitutional Court, particularly regarding ethical dilemmas and the "judicial capture" of candidate eligibility requirements. The article further explores the paradigm shift from proceduralism to substantive justice, arguing that the realization of equitable outcomes requires judges to adopt a "Justice as Fairness" approach, rooted in natural law and human rights, to balance the inherent power asymmetry between the state and its citizens. The study concludes that safeguarding judicial integrity requires institutional reforms including transparent appointment mechanisms, budgetary autonomy, and a progressive interpretive framework that transcends formalistic legal positivism.

**Keywords:** Judicial Independence, Autocratic Legalism, Substantive Justice, Checks and Balances

**1. INTRODUCTION**

The global constitutional order is currently grappling with a profound recession in the rule of law, as evidenced by the 2025 Democracy Report which indicates that the level of democracy for the average world citizen has regressed to 1985 levels (V-Dem Institute, 2025). This "Third Wave of Autocratization" has manifested in a global environment

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where autocracies (91) now outnumber democracies (88) for the first time in two decades, with nearly 72% of the global population living under autocratic regimes (V-Dem Institute, 2025). Within this turbulent landscape, the traditional doctrine of checks and balances—designed as a dynamic equilibrium to prevent the concentration of authority—is undergoing a severe stress test. The emergence of new administrations, particularly those following populist or "newly democratic" mandates, often brings an aggressive "administrative presidency" that seeks to bypass legislative and judicial hurdles through unilateral executive actions (Wong, 2026).

The urgency of this research is underscored by the 2024 Indonesian simultaneous general election, which scholars have characterized as a critical juncture for the nation's democratic consolidation (Jebabun, 2025). While the elections were procedurally conducted, significant irregularities and ethical controversies surrounding the Constitutional Court have raised alarms about the rise of "autocratic legalism"—a strategy where legal mechanisms are used to dismantle democratic norms from within (Jebabun, 2025). Previous studies, such as those by Samudro & Enggarani (2025), have emphasized the imperative of maintaining judicial independence as the "last bastion" of the constitution against short-term political interests. Furthermore, Nainggolan & Zainab (2024) highlighted that the integrity of the judiciary is non-negotiable for the survival of post-reform democracy. However, research by Pujayanti et al., (2024) suggests that the judiciary's role is increasingly challenged by power personalization and the formation of alternative constitutional paths that serve dynastic interests.

Despite this wealth of scholarship, there remains a persistent gap in the analysis of how judicial integrity can be shielded from "intra-judicial" capture while simultaneously evolving toward a model of substantive justice. This paper aims to solve the limitations of previous studies by synthesizing global trends in judicial interference—such as budgetary manipulation and politicized appointments—with a theoretical exploration of

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"substantive justice" as a corrective to the dominance of formalistic legal positivism (Alfons et al., 2024). The significance of this research lies in its novel comparative framework, contrasting the Indonesian experience with European trajectories and international standards, to propose a resilient model for judicial oversight in an era of executive dominance. By integrating perspectives from natural law, the "Justice as Fairness" concept of John Rawls, and the pragmatism of contemporary international law, this study offers a comprehensive blueprint for guarding the independence of the judiciary as a prerequisite for a just and equitable society (Okelo et al., 2025).

## **2. METHOD**

This research employs a normative juridical method, supplemented by a comparative and descriptive-analytical approach to examine the interaction between institutional integrity and the realization of substantive justice (Irham & Ramli, 2026). The study analyzes primary legal materials, including the 1945 Constitution of Indonesia, the Indonesian Electoral Law, and landmark Constitutional Court rulings such as Decision 90/PUU-XXI/2023 and 70/PUU-XXII/2024. Secondary sources include international democracy indices (V-Dem, World Justice Project), reports from the United Nations and the International Commission of Jurists, and academic journals published within the last five years (Fathya & Santika, 2025).

The analysis focuses on two primary dimensions: first, the mechanism of "judicial capture" within the framework of autocratic legalism during executive transitions; and second, the theoretical and practical pathways for achieving substantive justice in the administrative and constitutional courts. By comparing the Indonesian context with contemporary developments in Spain, Poland, and the United States, the research highlights universal patterns of political interference and resistance strategies. The

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qualitative analysis is supported by evidence synthesis from over 70 research snippets, providing a data-rich foundation for the findings.

### **3. RESULT & DISCUSSION**

#### **The Erosion of Judicial Autonomy and the Specter of Autocratic Legalism in the New Era**

The global landscape of checks and balances is currently facing a "recession" that is both structural and psychological. According to the World Justice Project (WJP) 2025 Index, judicial independence—the final line of defense against executive overreach—is weakening globally, with 61% of countries reporting a decline in judicial limits on government power (World Justice Project, 2025). This decline is part of a broader "Third Wave of Autocratization" where the "favorite weapon" of autocratizers is no longer the military coup, but rather media censorship and the systematic undermining of elections and civil society (V-Dem Institute, 2025). In many jurisdictions, this process is formalized through "autocratic legalism," where the legal system appears procedurally legitimate but is strategically hijacked to serve the interests of the powerful (Jebabun, 2025).

In the United States, the second Trump administration has been noted for an unprecedented expansion of the "administrative presidency," utilizing over 104 executive orders in just its first two months to circumvent legislative prerogatives and reshape federal policy (Bromley-Trujillo & Dichio, 2025). This trend is mirrored in Indonesia, where the 2024 election cycle became a focal point for the manipulation of judicial institutions (Jebabun, 2025). The most striking example was the Constitutional Court Decision 90/PUU-XXI/2023, which modified the age requirements for presidential and vice-presidential candidates, effectively creating an "alternative path" for the son of the incumbent president to enter the race (Jebabun, 2025). The subsequent ethical sanctions imposed on Chief Justice Anwar Usman by the court's honorary council underscored a

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deep-seated "intra-judicial" threat, where key actors within the judiciary facilitate political agendas (Hamdani et al., 2024).

The mechanisms of political interference in modern democracies have evolved to become more sophisticated and less overt than in previous decades. Governments now utilize a range of strategies to create institutional dependencies and reduce the likelihood of court decisions that challenge government actions.

<b>Pattern of Interference</b>	<b>Mechanism of Execution</b>	<b>Documented Cases/Impact</b>
Manipulation of Appointments	Restructuring selection bodies to ensure political dominance over judicial recruitment (Fathya & Santika, 2025).	Poland (post-2015), Hungary; loss of counter-majoritarian capacity (Fathya & Santika, 2025).
Strategic Budgetary Control	Allocating judicial budgets as a reward for compliance or a punishment for dissent (Fathya & Santika, 2025).	Poland (Ministry of Justice budget cuts), Latin America; documented self-censorship (Fathya & Santika, 2025).
Legislative Constraints	Frame reforms as "efficiency" measures while neutralizing judicial review and oversight (Fathya & Santika, 2025).	United States (curbing agency oversight), Indonesia (Pilkada Bill attempt) (Jebabun, 2025).
Suppression of Accountability	Restricting civic space and targeting media to prevent external monitoring of the judiciary (Fathya & Santika, 2025).	Russia, Hungary, and increasingly the U.S. and Indonesia; erosion of "Open Government" factors (Fathya & Santika, 2025).
Technological Vulnerability	Cyberattacks and the use of AI to influence or compromise judicial decision-making (Solovyeva, 2025).	ICC (2025 report), global trends in "hallucinations" and synthetic text production in courts (Solovyeva, 2025).

The data indicates that when executive branches in restricted civic environments systematically suppress civil society, judicial capture becomes nearly inevitable (Fathya

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& Santika, 2025). In the European context, the International Commission of Jurists (2025) has identified "strategic litigation" as a response to this pressure, yet the "fatality rate" of democracies undergoing autocratization remains alarmingly high at 67% (V-Dem Institute, 2025). Of the 45 countries currently in an episode of autocratization, only 9 have managed to remain democracies as of 2024 (V-Dem Institute, 2025).

In Indonesia, the phenomenon of "judicial capture" is intertwined with the strengthening of a "legal oligarchy" (Samudro & Enggarani, 2025). Research suggests that Indonesia's electoral politics are increasingly dominated by power personalization, where judicial rulings exploit the ambiguity of constitutional norms to favor dynastic interests (Samudro & Enggarani, 2025). The tension between the General Election Commission (KPU) and the Election Supervisory Agency (Bawaslu) further complicates this, as ethical violations by election officials—often breaching standards outlined in the Criminal and Electoral Laws—have severely compromised the integrity of the 2024 democratic process (Zarkasi et al., 2025). Criminal violations, including state apparatus interference and vote-buying, remain the most severe threats, pointing toward a "rule by law" environment rather than a true "rule of law" (Hamdani & Fauzia, 2021).

The future outlook for checks and balances in this era depends on the ability of the judiciary to reassert its constitutional authority. In the United States, the federal judiciary has begun to take "quiet but important steps" to bolster its independence, such as requesting independent control over real property and security funding to insulate itself from executive "political whims" (Heymann, 2026). Similarly, the Indonesian Constitutional Court has seen a slight recovery in public trust—increasing from 58% to 73% following the 2024 dispute trials—suggesting that the *performance* of the court in handling high-profile conflicts remains a critical determinant of its social legitimacy (Narwadan et al., 2025). However, as long as the mechanism for appointing judges

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provides "large space for political institutions to influence independence," the risk of relapse into capture remains persistent.

### **Transcending Proceduralism: Pursuing Substantive Justice in the Face of Executive Dominance**

The second primary challenge in the era of new administrations is the prevailing dominance of "formalistic legal positivism" within the judicial system. Legal positivism, which separates law from morality and prioritizes compliance with established rules, often serves as a shield for arbitrary government actions that are "procedurally valid" but "substantively unjust". In the Indonesian State Administrative Court (PTUN) and the Constitutional Court, public expectations for justice are often frustrated when judges focus solely on technical compliance rather than the essence of the rights at stake. Achieving "substantive justice" requires a holistic approach that integrates theoretical, philosophical, and human rights frameworks (Alfons et al., 2024).

Substantive justice is defined as an element of the modern legal system that aims not to merely enforce rules, but to ensure that the "substance of justice" is genuinely felt by those seeking it (Hamdani et al., 2025). This requires a transition from the "transsubstantive" rules of the mid-20th century to a model of "substantive equality," which identifies and remedies structural barriers to equal opportunity in the legal process (Stancil, 2017).

<b>Framework for Justice</b>	<b>Theoretical Basis</b>	<b>Application in the Judiciary</b>
Natural Law Theory	Universal principles of truth, justice, and morality.	Acting as a counter-balance to positivism; prioritizing material truth over formal rules.
Justice as Fairness	John Rawls' concept of ensuring justice for the disadvantaged.	Evaluating outcomes through the "veil of ignorance" to prevent bias toward the powerful.

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Distributive Justice	Fair distribution of resources, rights, and responsibilities.	Balancing the power imbalance between the citizen plaintiff and the state defendant.
Pancasila Values	The foundation of the Indonesian state.	Synthesizing formal legal certainty with a "sense of social justice" and human dignity.
Human Rights (HAM)	Fair trial standards and protection against arbitrariness.	Ensuring state accountability for policies that harm community rights (e.g., environmental or labor laws).

The comparative study between Indonesia and Spain highlights that both jurisdictions face parallel challenges of "formal rigidity" and a gap between normative ideals and "lived justice" (Ohoiwutun et al., 2026). While Spain has moved toward the "constitutionalization" of civil justice—using constitutional interpretation to guide ordinary civil disputes—Indonesia continues to struggle with "pragmatic dualism," where international law is cited only sporadically and often only to bolster existing domestic principles (Ohoiwutun et al., 2026). The authors of the 2024 study on the Indonesian Constitutional Court found that it mentioned international legal instruments in only 10% of cases Decided between 2003 and 2023, suggesting that the court treats international law as a "source of ideas" rather than a direct source of domestic obligation (BUTT et al., 2026).

To bridge the gap between certainty and justice, the judiciary must embrace the "Active Judge Principle" (*Dominus Litis*), where the court takes a leading role in exploring facts beyond the procedural submissions to ensure a fair substantive impact (Riadhussyah et al., 2022). This is particularly critical in hybrid regimes—which occupy the middle ground between democracy and autocracy—where judiciaries often maintain a "façade of democracy" while being internally controlled by patronage networks (Hanelt & Vincze, 2023). In Hungary, for example, influence over the judiciary is strategically

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divided among competing institutions to maintain the *appearance* of the rule of law while preventing actual judicial resistance to the government (Hanelt & Vincze, 2023).

The tension between procedural speed and substantive thoroughness is another emerging concern. In electoral disputes, "accelerated judicial processes" often create a risk that decisions will poorly reflect substantive justice due to the limited time available for gathering evidence and verifying material truth (Mayasari et al., 2025). As noted by the maxim "justice delayed is justice denied," the drive for efficiency must not come at the expense of "comprehensive legal reasoning" (Mayasari et al., 2025). Furthermore, the rise of AI tools in the judiciary introduces a "hallucination risk," where synthetic text production might lead to decisions based on fabricated information, potentially undermining fair trial rights (J20 Briefing Papers, 2026).

Ultimately, the realization of substantive justice requires a transformation of the "epistemic approach" of the judiciary itself (Ohoiwutun et al., 2026). Judges must transition from being "guardians of legality" to becoming "moral interpreters" who can apply "principled judicial discretion" to align legal certainty with equitable results (Ohoiwutun et al., 2026). This evolution is essential to restore public trust in institutions that have been stretched to the "breaking point" by partisan rhetoric and the erosion of civic space (Smith, 2025). Without a judiciary that is both independent and substantively fair, the "transactional federalism" of the new era risks turning the law into a mere instrument of executive will, thereby collapsing the very foundation of the democratic project (Bromley-Trujillo & Dichio, 2025).

#### **4. CONCLUSION**

The dynamics of checks and balances in the era of new administrations reveal a fragile system under siege from the forces of autocratic legalism and institutional capture. The global trend toward autocratization, impacting over 70% of the world's population,

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underscores the insufficiency of formal constitutional design when political actors reject the norms of inter-branch respect. This research has demonstrated that judicial integrity is currently undermined by a dual threat: external interference through appointments and budgetary manipulation, and internal erosion through the dominance of formalistic legal positivism. In Indonesia, the 2024 elections served as a poignant case study of how judicial mechanisms can be instrumentalized to favor dynastic and elite interests, leading to a profound crisis of legitimacy.

To guard the integrity of the judicial branch and realize substantive justice, several strategic imperatives must be pursued. First, the judiciary must reassert its institutional autonomy by securing independent control over its finances, security, and real property, thereby reducing its vulnerability to executive pressure. Second, a paradigm shift from "formal equality" to "substantive justice" is required, necessitating an active judicial role that prioritizes natural law, human rights, and the "Justice as Fairness" principle over rigid proceduralism. This is especially vital in balancing the power asymmetry in administrative and constitutional disputes. Third, international cooperation and adherence to global standards, such as the Manila Statement on Judicial Integrity, must be strengthened to foster a collective regional resilience against democratic backsliding.

Finally, the study recommends institutional reforms to depoliticize the appointment process for constitutional and election officials, ensuring that merit and ethical probity—rather than political loyalty—govern the selection of the "front guard" of democracy. As the world navigates the mid-21st century, the judiciary's ability to evolve into a substantively fair and independently reasoned arbiter of power will determine whether the current wave of autocratization is a temporary setback or a permanent dismantling of the democratic rule of law.

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