



A critique and solution of justice, certainty, and usefulness in law enforcement in Indonesia

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ABSTRACT

In Indonesia, law enforcement agencies do not collaborate to achieve justice. Due to the legal institution's position and status, the Supreme Court is responsible for adjudicating and deciding cases, while the executive is responsible for investigating and adjudicating. Consequently, instead of striving to uphold the law in the public interest, they typically prioritize the interests of their respective institutions. Therefore, the purpose of this study is to determine if law enforcement and judicial justice can bring harmony to those seeking justice. This study aims to provide answers through the use of juridico-philosophical methods and literature studies by conducting theoretical studies of theories of justice and their relationship to the implementation of law enforcement within the judiciary. The findings indicate that power and other powers continue to influence the judicial system as an institution whose independence in upholding law and justice is guaranteed, particularly the influence of executive power and political power. In addition, the court's function as a law enforcement agency is not entirely autonomous, so the court's primary responsibility is to promote peace and justice in society. Therefore, in order to promote a sense of tranquility among justice advocates, it is necessary to strengthen the justice system, which is their final sanctuary.

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1. Introduction

In Article 1 paragraph (3) of the State Constitution (UUD) The Republic of Indonesia in 1945 has very clearly stated that Indonesia is a country of laws. The concept of a constitutional state (rechtsstaat) as outlined in the constitution of the country is the basic law of the state which occupies the position as the highest law in the rule of law. Thus, the term constitutional state of law has been mentioned in the 1945 Constitution (Supriyono, 2016). The establishment of a great and honorable national civilisation relies heavily on reinforcement in social life. A society

that does not uphold the values of fair living cannot flourish. An infused with the notion of proof and generally referred to in justice as justice, justice is the ultimate goal of a legal system and is linked to its function as a method of distributing and maintaining the nobility of life in society. The compromise is to make sure that positive law always incorporates this feeling of justice, given that a sense of justice often lacks legal certainty and positive law cannot always secure it. Justice is the bedrock of the judicial system. The law is only a tool for achieving a standard of justice that everyone can agree upon. All judicial and legal systems exist with the overarching goal of upholding justice. When compared to other countries' legal systems, nearly none of them fare well. As a result, several countries are undergoing changes or have just undergone reforms. The United States (US) is still flexible even though it has gained a reputation for being a democracy-supporting nation. The country decided to make changes because it felt the existing judicial system was inadequate. The reality is that many laws produced by the DPR and the President were annulled by the Constitutional Court, occurring as a result of the plural content of the law reflecting injustice and legal uncertainty. The high number of judicial reviews is a signal of the lack of accommodation of the interests and rights of citizens in a statutory product. It is the absence of harmonious arrangements made by the DPR that has had an impact on the multiplicity of laws being challenged (Mochtar, 2015).

Enforcement law in Indonesia is still not yet walked with good and so concer (Romdoni et al., 2022). It is challenging to build courts that actually play a reconciliatory function by producing unbiased rulings because of the public's and law enforcement's perceptions of the law enforcement procedure in court. Courts' verdicts issued by the judge ideally contain aspects of legal certainty, justice, and utility (Wantu, 2012). It is possible to say that the measure of justice in law enforcement is how so, since equality in justice is a situation of strengthening the law based on the descriptions and assumptions of the law enforcers themselves, both in situations of strengthening the law in general (enforcement of equality in conventional ways in situations of relations between people and authorities) and strengthening legal prudence (between people and other people in special relationships). In practice of law enforcement in Indonesia, it is still common for judges to deviate from legal principles. In fact, it is the legal principles that should be the main consideration before making a decision (Nurudin, 2016). Given the existing state of law enforcement, justice demands it. Therefore, the question arises as to whether or not persons seeking justice may find peace in the decisions made by judges who support law and justice. The author concedes that there is no perfect legal theory while discussing the law's inherent antinomy. This is because the ideas driving the contemporary evolution of law have their own benefits and drawbacks, which contribute to this situation. To prevent creating tension, the law should ideally account for competing interests in a balanced way. The extracts from earlier scientific journals used as main sources for this article provide a solid basis for further study. In discussing antinomy situations and judicial enforcement, Fence M. Wantu's 2007 essay "Antinomie in Law Enforcement by Judges" is cited. Another useful reference is "Antinomies in Indonesian Laws and Regulations" (2015) by Zainal Arifin Mochtar, wherein he explores many antinomy issues and presents examples of antinomy occurrences that are present in Indonesian law. The law serves to justice, certainty and benefit. In the field of law enforcement practices there are times when conflicts between legal certainty and justice (Siregar, 2018).

This research wants to confirm that the objectives of law according to Gustav Radbruch stated that law has three objectives, namely, justice, certainty and benefit. Apart from that, practically this research is able to answer questions from the public who ask about the purpose of law in Indonesia. It is hereby stated that although there are three objectives, not all of them can be achieved so that if there is a conflict between the three legal objectives then justice becomes something that needs to be prioritized.

The creation of a sense of justice, certainty and usefulness in the life of the community when justice and wisdom are fair and desirable by the community, the need for the values of certainty in order to achieve the existence of legal benefits in the life of society, one example is a judge decision that can provide benefits for the world of justice, the general public and the

development of science. In order to satisfy the community's demands for the upholding of law and justice, the judge's decision against the defendant of the offense must be based on the impartial considerations (Romdoni et al., 2023). For a long time, justice seekers/the public have yearned for fair law enforcement. However, in current law enforcement practices, the value of legal certainty is more prominent than the community's sense of justice (Moho, 2019). The two previous articles are pertinent enough for the author to use them as a starting point for additional relevant investigation. This research comprises the findings of a study that describes the laws that adorn statutory regulations, which are products of legislation or executive policies, as well as in law enforcement, particularly the actions of Indonesian justices. In the two articles, there was no further examination of potential treatments for these symptoms. In addition to investigating and explaining the tension between benefits, legal certainty, and justice in Indonesian law enforcement, the author will investigate additional options to alleviate these symptoms.

2. Method

The juridico-philosophical approach is used to examine and analyze the problems in this study, the approach used is the statutory and case approaches, using secondary data consisting of primary legal materials such as laws, secondary legal materials such as legal journals and tertiary legal materials such as legal dictionaries. The secondary data that has been collected is then analyzed using qualitative deductive techniques to produce a narrative in the form of research topic analysis as the central viewpoints or themes of observation are legal cases and the manner in which they are implemented in court to attain equality and peace for equality observers. Therefore, this research method includes theoretical observations of the theory of justice in relation to the strengthening of law in the judiciary through literature studies. Consequently, both the arguments and the results of the analysis are qualitative in nature, and the conclusions are founded on research on the demands of justice that are closely related to law enforcement. One could argue that the law serves no particular purpose. The purpose of the law is to attain justice. Every case decision is always preceded by a decision in the interest of justice (Hosnah et al., 2021).

3. Analysis and Results

3.1. Understanding Justice in Law Enforcement

Since the beginning of Greek philosophy, the concept of justice has been the subject of intense discussion and debate, as it incorporates a vast array of meanings, including religious, ethical, philosophical, legal, and social justice. Theoretically, when it comes to resolving problems involving law enforcement, justice is always the priority when establishing the law. Ideal legal development must be accompanied by awareness that law enforcement is a social sub-system, so that environmental influences are quite significant, such as the influence of political, economic, socio-cultural, security and security, science and technology, education and so on (Muhammad, 2020). Many legal disputes remain unresolved due to their association with political matters. Systematically, legal truth and justice are manipulated to prevent the judiciary from determining the actual state of affairs. Because the law is positioned as an instrument of power and not as the "commander in chief" in determining justice, government policy cannot convert the law into this position. Or, law and justice wind up costing a lot of money, and only wealthy individuals or groups can afford it. There are numerous instances that undermine people's sense of justice. In the case of detention of Asyani, a 63-year-old grandmother who was accused of stealing 38 teak boards in Situbondo, she was found guilty and sentenced to 1.5 months in prison. Similarly, Grandma Minah was slandered for allegedly stealing as many as three pieces of chocolate cocoa. Similar incidents occurred in other cases, such as with Manisih and Sri Suratmi, who were found culpable of stealing rando fruit worth Rp 12,000. In a law must apply the aspects that are used for the settlement of cases before the law (Putri & Arifin, 2019).

Previous cases corroborate the claim that law and justice are not on the side of the vulnerable. It differs from recent cases such as the BLBI case and the case of DKI Governor Basuki Tjahaja Purnama, who was allegedly implicated in a number of corruption cases, including the Sumber Waras and Transjakarta cases, although this has not yet been disclosed to investigate thus far. This situation demonstrates that the government's legal policy lacks legal certainty and justice, has injured several individuals who are indeed suspects and defendants in society, and even appears discriminatory. Injustice and justice are frequently contrasted. There is injustice wherever the concept of justice exists. In the field of legal studies, there are numerous examples of injustice that are the antithesis of justice, such as in Indonesia: unfair treatment of ordinary people, unfair reporting, unfair distribution of aid, poverty, gender inequality in local communities, and unfair law enforcement. Laws that are considered unfair can be ignored in order to achieve justice by using a progressive legal approach because this theory can be understood as normative sociological so that it can be applied to three components of law, namely substance, structure and culture (Lisma, 2019). The goal is law enforcement so that the legal system can function as it should, namely social institutions, institutions of justice, social control, social integration mechanisms and social engineering (Irwan et al., 2021). There has not yet been a (general) criminal law in Indonesia that is (truly) separated from colonial criminal law patterns. (Handoko, 2019). The criminal justice system in Indonesia, like many other countries, faces the challenge of effectively addressing crime while ensuring justice for victims and rehabilitation for offenders (Priyana et al., 2023).

3.2. Judicial Certainty in Upholding the Law

The guarantee of the judiciary's independence is an essential component of the concept of a rule of law, which is independence. The purpose of the division of authority from spaces in the state's authority is to assure the implementation of political freedom for society members within the state. The separation of powers debate cannot be isolated from judicial authority. During the period of democratization, the judiciary played a crucial role in implementing the concept of the rule of law because it is an institution that implements the constitution, upholds human rights, and ensures fair and democratic procedures to ensure certainty and justice for all those seeking justice. Particularly as society shifts from an authoritarian to a democratic and open society, justice is essential. This is illustrated by the function of the judiciary in preventing the abuse of the justice system for the advantage of society. In an ideal scenario, judges learn not only how to prevent the exercise of unjust and democratic powers of government in the course of their judicial duties, but also how to mediate conflicts between political elites or ruling parties. In practice law enforcement in Indonesia is still often the case the judge to deviate from the rules of law. The role of judges with ideal norms can be transformed through legal considerations by judges in deciding a case presented to them without being bound by the role and tools of any power interests, where power is synonymous with political content. And the morality of judges can be measured by the issuance of decisions or legal products as well as law enforcement policies (Khosyi'ah, 2021).

The Second Amendment to the 1945 Constitution of the Republic of Indonesia Article 28I paragraph (1) which contains legal certainty is basically proposed based on the political objectives of a certain group and does not answer the issue of legal certainty that actually occurs in Indonesia between positive law and customary law of the Indonesian people. The issue of legal certainty in Indonesia between positive law and customary law of the Indonesian people in its development was then resolved by Law Number 48 of 2009 concerning Judicial Power (Andrianto, 2020). the legal profession (judges) is a profession that is full of ethical values, because it deals with various humanitarian interests from society in general through actions and decisions taken (Toule, 2022).

3.3. Benefit in Law Enforcement in Indonesia

The social context in which laws are implemented and enforced is what actual justices see. Consistently, law enforcement officials bring up the issue of fair and impartial law enforcement.

Law enforcement reformation ideally must be done through legal system approach, that covered legal substance sub system, legal structure sub system, and legal culture subsystem (Ansori, 2018). Legal culture is one of the important aspects that must be considered by legal functionaries in carrying out law enforcement, a culture consisting of values and attitudes that can affect the way law works (Antoni, 2019). Law enforcement officers must have the courage to step outside their understanding and positivistic method of law, because the task of enforcement officers is not only to enforce the law but also to uphold the law (Budimansyah, 2020). The number of corruptions is still increase caused by factors such as lack of understanding of the law enforcement officers on duties and responsibilities, lack of morality of apparatus, as well as the lack of a functioning supervisory institutions (Suramin, 2021). In this regard, law enforcement officials, including justices, must be truthful and impartial. Law enforcement entails more than meets the eye. Legal strengthening activities are conducted and conducted in the midst of everyday community life. Moreover, it is essential to understand that law enforcement is a part of society and can be influenced by social situations and interactions. Citizens with a clear comparison between "having" and "not having" a distinct law enforcement system will emerge in the real world, where it is obvious that citizens who maintain or develop an idiosyncratic system are status-driven. Or a society of open and equal citizens in an environment of authoritarian power. This circumstance will significantly impact the independence and liberty of justices. Based on these facts, it is evident that social structures and systems influence the independence of judges as well as the structure or order of state power. In addition to the desires of the justices, the participation and comprehension of the citizens determine a balanced legal strengthening. Correct and balanced law enforcement is determined not only by the will of the judge as "equal king's wife", but also by the capacity of citizens to target correct and balanced legal action on their decisions.

When this occurs in a society that is entirely subject to the will of the authorities and "presses" judges to make decisions based on the use of freedom (press court), law enforcement becomes complicated. certain privileges. To ensure that law enforcement is equitable and effective, society must embrace the necessary conditions. Society is the arbiter of illegal atrocities, not as a means of enforcing the law equitably and accurately. The implementation of the policy on a certain product of legislation seems to be something that is considered very simple (Fartini, 2022).

In addition, law enforcers must justify any means necessary to win a case, which is the third legal obstacle they face. This includes both civil and public cases involving bribery or taking advantage of any relationship, either directly or indirectly through another party laundering of funds, narcotics trafficking, and other offenses. There was never any collusion or bribery in court; rather, it was the result of cooperation between the bribe recipient and the bribe recipient, such as a judge and a litigant. As a consequence of the revelation of a number of cases, a number of advocates who should have been pillars of law enforcement were arrested. Instead, they indulge in dishonorable conduct. If a society desires a well-functioning judiciary, then accepting the judge's decision will foster satisfaction and harmony. Judges cannot isolate the above-mentioned law enforcement actions from the actuality of people's lives. Consequently, the ability of judges to uphold the rule of law and justice is highly dependent on the circumstances and realities of the surrounding community. many individuals break the law, judges must be extremely prudent in their decision-making (Hamdani et al., 2023).

In accordance with the explanation regarding the independence of the judiciary, the question is how to guarantee the high quality of the decisions made by justices as a representation of the judiciary that reflects a sense of justice. In turn, this becomes one of the building blocks for a strong judiciary, which ultimately leads to judicial excellence (court excellence). Judicial institutions which are the main representation of the face of law enforcement to uphold human rights are required to be able to give birth to legal certainty, justice, social benefits and social empowerment through their decisions. The failure of the judiciary in realizing the objectives of the law has led to increased public distrust of the judiciary

A favorable verdict demonstrates a judge's ability to resolve disputes. As administrators of judicial power whose autonomy is guaranteed by the Constitution of 1945, judges have the authority to resolve cases. "Decision" and "Judge" cannot be separated in the exercise of judicial authority because court decisions are the product of judges and the character of decisions reflects the quality of judges. There are numerous theories on how to practice effective judicial rulings, but only those that seek legal justice and impartiality in court are applicable. A judge's decision that meets the case's requirements is one that reflects a sense of justice that can be carried out, accepted, or satisfied by justice seekers.

There are two foundational issues at play here: how to make legal and fair decisions, as well as sound decisions. A number of factors may make it challenging for the judiciary to make an informed decision regarding law enforcement, given that "upholding the law means upholding the law" However, maintaining the law is distinct from maintaining justice. It is necessary to implement and enforce the law. Nonetheless, the law must be observed, implemented, and not broken. "The law must be upheld even though the world is collapsing" or "fiat justitia et pereat mundus," also known as "the law is harsh, and that's how it sounds or it is, all for the sake of certainty of its enforcement," is consistent with this concept. It turns out that the criminal law enforcement process can lead to violations of the human rights of perpetrators as a result of actions carried out by criminal law enforcement officers (Rumega, 2019). Sudikno Mertokusumo stated that the purpose of law is to establish legal certainty in the interest of public order, which will lead to an orderly society.

According to one opinion, upholding the law for the sake of legal certainty is equivalent to upholding the law. This viewpoint is influenced by the belief that the statutory legal system consists solely of positive norms. The Dutch legal system, which is conversant with the written system, follows our positive legal system or is influenced by it. The concordance also demonstrates that the Indonesian legal system is written. Legal positivism, which views law as nothing more than a positive provision in the statutory system, has a significant impact on how the listed law is understood. Even in Indonesia, there are Qanuns that are made that must fulfill the elements of legal objectives so that they are more beneficial to the wider community. The objectives of the law are legal justice (philosophical), legal certainty (juridical) and legal benefits (sociological). prosecution, and examination in court and in the judge's decision must contain elements of justice, legal certainty and benefit which are the objectives of the law itself, but a dilemma arises later when the three objectives of the law collide with each other so what is put forward is the purpose of the law in the form of legal benefits

4. Conclusion

The judiciary as an institution that ensures its independence in upholding the law and equality is influenced by other powers and authorities, particularly administrative authorities and other powers in the public, private, and social spheres of society. Inasmuch as their function as law enforcers is not completely separated from politics, the courts have not achieved their primary objective of achieving social justice and harmony. Therefore, in order to promote a sense of tranquility among justice advocates, it is necessary to strengthen the justice system, which is their final refuge. These methods can be used to enhance the justice system: Ensure the correct writing of laws governing justice and law enforcement. Control in the form of oversight of judicial institutions, which must be carried out proportionately and professionally, as well as the position and standing of the legal process as the most essential element for upholding law and justice, must be comprehended by those whose cultures are connected. Therefore, to resolve legal disputes with greater transparency and objectivity.

Moreover, there are two crucial aspects that must be addressed: the procedure for strengthening the law (procedural equality) and the consequences of strengthening the law itself. Both of these perspectives are associated with efforts to defend and uphold impartial jury decisions and to elicit a concordant response from observers of justice and equality for substantive justice which

refers to court decisions or judges who can reconcile the divide between individual justice and social justice by meticulously incorporating social or moral values into each piece of legislation. The integration of social and individual justice through judicial decisions can bring tranquility to those seeking justice. The use of the above methods is recommended for the Indonesian judiciary so that justice, benefit and legal certainty can be created.

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