



## Political Law in Enforcement Law in Indonesia

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**Abstract.** Law is a guideline and rules related to the concept of living in society and will always be in accordance with the conditions of society. Law is a demand to be able to provide justice, meaning that law is always faced with the question of whether law can realize justice. Related to the concept of law, legal politics is interpreted as an activity that determines the pattern and method of forming law, supervising the operation of law, and updating law for the purpose of the State. Therefore, law is a determinant of politics, and is also related to democracy in the sense that political activities are regulated and must be subject to legal rules. Law is viewed from the perspective of *das sollen* (necessity), viewing that law must be guided by relations between members of society. While those who view it from the perspective of *das sein* (reality), empiricists see that law is greatly influenced by politics not only in the process of making it, but also in its empirical realities. So that law is influenced by politics and even now legal autonomy in Indonesia is often intervened by politics, not only in terms of its making, but also in its application, both in terms of law enforcement. This study aims to determine the impact of the development of legal politics in the law enforcement system in Indonesia and the existence of legal politics in the law enforcement system in Indonesia. The method used in the study is normative juridical.

**Keywords:** Law, State, Legal Politics, Law Enforcement

### 1. INTRODUCTION

Law will be used as a tool used to achieve the goals of the State. As is known, law is a guide and rules related to the concept of living in society and will always be in accordance with the conditions of society. Therefore, ideally, law is made by prioritizing justice. Justice can be realized if political activities that produce legal products are in line with the values of justice itself. The formation of the law itself carried out by political institutions must also contain the principles of building a just legal supremacy.

Law as an embodiment of values that contain meaning, that its presence is to protect and advance the values that are upheld by its society. One of the critical discussions about law is the demand to be able to provide justice, meaning that law is always faced with the question of whether law can realize justice.

Related to the legal concept, legal politics is defined as an activity that determines the pattern and method of forming laws, supervising the operation of laws, and updating laws for the purposes of the State. As expressed by Soedarto, legal politics law as a policy of the State through state bodies that have the authority to set regulation Which desired, Which estimated will used For express What Which conceived in public.

Therefore, law is a determinant of politics, and is also related to democracy in the sense that political activities are regulated and must be subject to the rulesrule of law. Politics uses

all means to achieve goals, both legal and illegal. It is also said that politics determines law, because law is the result of crystallization of political wills that interact and even compete with each other. So that in interpret whether law influence political or political affect the law. This depends on the perspective used by the experts. Where, there are those who look from the perspective of *das sollen* (necessity), viewing that the law must be guided by the relationship between members of society. While those who look at from corner *from turn signal* (fact), for adherent empirical see that law veryinfluenced by politics not only in the process of making it, but also in reality- empirical reality. Thus the answer to this question is very relative, depends from perspective where somebody see it.

So that law influenced by political And even until moment This often autonomy law in Indonesia in intervention by political, No only in matter its making, but Also in its implementation, even in terms of law enforcement. Sri Soemantri once Stating the relationship between law and politics in Indonesia is like a locomotive journey a train that has come off the rails. If law is likened to rails and politics is likened to locomotive, then it is often seen that the locomotive comes off the rails it should be on. Of course This is very contrary to the concept of law which should focus on justice. in play role in public.

## **2. FORMULATION OF THE PROBLEM**

1. What is the impact of the development of legal politics on the law enforcement system in Indonesia?
2. How is the existence of legal politics in the law enforcement system in Indonesia?

## **3. DISCUSSION RESULTS**

### **A. THE IMPACT OF THE DEVELOPMENT OF LEGAL POLITICS IN THE LAW ENFORCEMENT SYSTEM IN INDONESIA**

Society to justify the function of social order. Politics is also understood as a process of resolution of collective problems to fulfill collective policies in the social life of society related to values and choices for society in achieving a goal. Isbar explains that politics is a problem related to the variety of differences in life between leaders and people whose orientation is directed at improving power. Politics is also related to grounding ideals and moral teachings, as a coercive institution for the implementation of orders and moral teachings. Values in politics as a frame of reference for functioning religious values in the social order. Values in politics cannot be separated from ideology which is the source of

values and ideals that are actualized through political institutions or certain group organizations.

In legal science, matters concerning politics are better known as legal politics. Legal politics are the basic policies of state policy implementers in the legal field that will, are and have been in effect, which are derived from the values that apply in society to achieve the desired state goals. The legal politics of a country are different from other countries, this is in accordance with the historical background, outlook on life, socio-culture and political will of each country.

In a modern constitutional state, the one who can impose sanctions against violations of legal rules is the ruler. This is because law enforcement is the ruler's monopoly. The ruler has the power to impose sanctions against violations of legal rules. It is often said that law exists because of legitimate power. In history, laws have been found that are not based on legitimate power or power that according to applicable law is actually not authorized. In essence, law is power, but power that seeks order, not vice versa, law is used as a means to seize power by using methods that are detrimental to society and the state.

In a political system where social control is carried out through law, every activity will be attempted in accordance with human relations through specific means by avoiding unnecessary conflict. If the government is based on power, such a government will tend to increase tension in the political field and socially will create a repressive situation. While If the government is based on law, such a government will tend to reduce tension. Therefore, in order to prevent the occurrence of oppressive power structures, a legal system was developed that balances power by distributing rights and privileges between individuals and groups.

Law is a very complex entity, encompassing the reality of a pluralistic society, encompassing many aspects, dimensions and phases. The formation of law through UU aims to promote the protection of human rights which is the essence of a state of law. This protection certainly requires a control mechanism as part of the legal interests of society. Both social control, legal control and political control. Through law, these interests are integrated so that the protection of subjective rights of society is not reduced. Legal interests are carried out by providing the widest possible access for society in seeking justice. The law protects the interests of society by allocating power to the law itself to act in its interests. This allocation of power is carried out in a measured manner. Its breadth and depth are determined. That power is what is called a right. Thus, not every power in

society can be called a right. Only certain powers are given by law to a person or law enforcement agency.

Based on the above thinking, it is a must for the state when formulating provisions in legislation to always pay attention to the aspects of legal certainty and protection of citizen rights. Because if the law and power are not controlled, it will have an impact on all related legal aspects, it is possible that in terms of law enforcement, various interests will emerge from the authorities to be able to act inappropriately in terms of law enforcement. This will cause inequality and injustice in the law enforcement system.

Therefore, the impact of legal politics in the law enforcement system in Indonesia, until now, is still greatly influenced by the interference and interests of political elites. Where, they arbitrarily use their power to be able to escape the law, of course this is also one of the lessons for law enforcers so that later they will not be influenced and not lulled by whispers that invite legal abuses, especially related to law enforcement.

### **The Existence Of Legal Politics In The Law Enforcement System In Indonesia**

Humans as social beings can only realize their lives in togetherness with others by ensuring a shared life and providing a place for individuals and groups to defend themselves and fulfill their needs in order to achieve common goals. For this reason, a law is needed to regulate so that conflicts of interest can be prevented, and do not become open conflicts, which are solely resolved on the basis of the strength or weakness of the parties involved. Efforts to realize Pancasila as a source of values are to make basic values a source for compiling legal norms in Indonesia. The operationalization of the basic values of Pancasila is to make Pancasila the basic norm for compiling legal norms in Indonesia. The Republic of Indonesia has national laws which are a unified legal system. Where Pancasila is positioned as *a grundnorm* (basic norm) or *staatfundamentálnorm* (fundamental norm of the State) in the level of legal norms in Indonesia.

Legal policy is one of the policies taken or implemented by the State through State institutions or officials who are authorized to determine which laws need to be regulated, so that with this policy the implementation of the State and government can run well and orderly so that the State's goals can be gradually planned and realized. Legal policy also originates from national law, where with the relationship between the two, it is hoped that the authorities can guarantee the upholding of the supremacy of human law based on justice and truth.

Based on the concept of legal politics above, then as in the legal and power thinking ( *Right and Might* ) put forward by Hans Kelsen in the Dynamic Legal Concept related to the Legal System:

*“The efficacy of law belongs to the realm of reality and is often called the power of law. Thought law cannot exist without power, still law and power, right and might, are not the same. Law is, according to the theory here presented, a specific order or organization of power”.*

In this thought, Kelsen provides a description that between legal thinking and power, however, cannot be equated. Because between the two have different realms. Therefore, the relationship between legal politics and the existence of power is indeed very influential and even in the law enforcement system which is identical to the influence of parties who have interests in this case are political interests or parties who have power.

The role of legal politics in the law enforcement system in Indonesia, then refers to the purpose of the law itself. When law enforcement officers have known the purpose of the law, then applied in resolving cases, then related to the existence of deviations and the interests of other parties will most likely be avoided, considering that the purpose of the law is basically as a means of enforcing justice. The purpose of the law is as follows:

1. Ethical Theory, the purpose of law is to achieve justice;
2. Utility Theory, the purpose of law is to realize what is beneficial or useful for others;
3. Protection Theory, the purpose of law is to provide protection or to protect society, in other words, to protect humans in an active sense (creating safe conditions in society) and passively (preventing arbitrary actions).

The legal objectives of the Republic of Indonesia according to positive law are stated in the fourth paragraph of the 1945 Constitution, where the law maintains peace and creates balance between society and law enforcement. So in essence the purpose of the law is to provide justice, certainty, and benefits. The 1945 Constitution also reflects several noble ideals of the Indonesian people contained in Pancasila. These noble goals can be realized if carried out by state administrators who have integrity, dedication, and professionalism. Because good state administrators do have an important role in realizing the ideals of the Indonesian nation. However, in reality these noble goals are often tarnished by acts of abuse of power and authority by state administrators, thus triggering the proliferation of collusion, corruption, and nepotism (KKN) or in other words the existence of political interests in the life of the nation and state. In addition, society has not fully participated in carrying out the

function of effective social control over the administration of the state, so that the opportunity for KKN in the administration of the state is wide open.

According to Soerjono Soekanto, law enforcement is a process that involves making decisions that are not strictly regulated by legal rules, but have elements of personal judgment. The factors that influence law enforcement according to Soerjono Soekanto are:

33

1. The law itself is limited to statutes only;
2. Law enforcers, namely the parties who form and implement laws;
3. Facilities or means that support law enforcement;
4. Society, namely the environment in which the law applies or is applied;
5. Culture, namely the results of works, creations and feelings that are based on human will in social life.

It is often heard that the law does not reflect the sense of justice of the community, because law enforcers, especially judges, generally only want to create law enforcement or legal certainty by setting aside or ignoring the sense of justice. The model of the judge above can damage the joints and values of law enforcement that is fair, therefore, currently there is a great need for visionary and progressive judges to overcome the deadlock in law enforcement that is fair. On the one hand, the law must be enforced, but on the other hand, justice must also be upheld. Law enforcement is a bridge or gateway to achieving the goal of justice. If justice has been upheld without any social unrest, then it can be ascertained that law enforcement with justice has been realized, but if on the other hand it is not enforced with justice, then law enforcement can be said to be pseudo.

On the other hand, regarding the power of a judge in deciding a case, Hans Kelsen quoted the opinion put forward by Gray, namely:

*Gray himself says: "Is the power of the judges then absolute? Not so, the judges are but organs of the state, they have only such power as the organization of the states gives them. Gray thinks that "what the organization is determined by the wills of the real rulers of the state. If the organization of the state were actually the will of unknown and undiscoverable individuals, then the organization of the state itself would be unknown and undiscoverable. But the organization of the state is actually known. It is the "valid", and that means also the efficacious, constitution, it is the valid norms created on the basis of the constitution and that means the system of norms which, on the whole, is efficacious.*

Gray's concept of thought put forward by Kelsen is related to the duties of a judge and his position in the State. So, in his opinion it is said that a judge does not have absolute

power. Because what determines everything comes from the power of the State. The power to decide cases that is in the hands of the judge is only limited to what has been given by the State organization. Gray said, "the organization is determined by the will of the State ruler." Gray further explained that determining who is meant by the ruler is very difficult. Because this condition is indeed influenced by the conditions of validity, the reality of a constitution and political society.

Therefore, judges in deciding cases must act in accordance with the provisions of the regulations that have been set by the State. Of course, this is intended to avoid involvement from incompetent parties or those who have political interests. The existence of legal politics in Indonesia has indeed until now still reaped many pros and cons among the community, especially in terms of law enforcement. Law enforcement in Indonesia should be carried out with efforts to implement legal norms in real terms so that the law can function and be enforced as a guideline for behavior in living in society and the state, both by each citizen and law enforcement officers who have duties and authorities based on the law. This is in accordance with the adage put forward by Cicero, namely "*ubi societas ibi ius*", which means "*where there is society, there is law*". Society cannot live without law, because legal norms are what regulate human life in society.

In the future, in order to implement effective law enforcement, the following needs to be considered:

1. Regarding the legal structure: Internal reform of law enforcement institutions must be carried out consistently, professionally, and sustainably. Efforts to improve legal institutions from the judicial mafia must be implemented immediately. Law enforcers together with judges and advocates must be able to carry out their duties as well as possible, resulting in increased public trust.
2. Regarding legal substance: The drafting and formation of laws and the development of customary law must be in harmony with the needs of society and must be objective. and does not discriminate. A good legal system will force law enforcement officers to work honestly, effectively, efficiently and with quality.
3. Regarding legal culture: public awareness of the law (including anti-corruption attitudes and moral lessons) must be increased, and must even be taught early on within the family, including how a citizen has their own rights and obligations that must be carried out. From the government's side, there must be actions that can create a society that obeys (submits) to the law and respects the law (*law abiding-society*) not because they are afraid of law enforcers but because of self-awareness.

The government should not only focus on the formation of laws, but forget about improving the legal culture of its people.

In essence, to maintain the existence of legal politics in the law enforcement system in Indonesia, openness from law enforcers is very necessary. Because politics and law are often bait in the implementation of the law enforcement system in Indonesia. Therefore, efforts often arise that make legal politics in law enforcement diverted. This means that the existence of rules in the law enforcement system is only a display without ever being implemented properly. This is what makes the existence of legal politics in law enforcement in Indonesia give rise to pros and cons because it is not implemented with existing rules.

#### **4. CONCLUSION**

1. Based on the formulation of the first problem related to the impact of the development of legal politics in the law enforcement system in Indonesia, it is that with the continued development of legal politics in Indonesia, of course this will have implications in various lines of life. Especially in terms of law enforcement in Indonesia. Because legal politics in the law enforcement system in Indonesia, until now, is still greatly influenced by the interference and interests of political elites. Where, they arbitrarily use their power to be able to escape the law, of course this is also one of the lessons for law enforcers so that later they will not be influenced and not lulled by whispers that invite legal abuses, especially related to law enforcement. So related to the impact caused by the existence of legal politics in the law enforcement system in Indonesia is that often in enforcing the law the role of legal politics is not applied properly, where law enforcers actually prioritize the interests of the political elite. Therefore, in terms of law enforcement, law enforcement officers should not provide different treatment even though they are in power, because after all everyone has the same rights in the eyes of the law. Law enforcement officers should not combine the interests of the political elite to enforce the law.
2. Based on the formulation of the second problem related to the existence of legal politics in the law enforcement system in Indonesia, it is in law enforcement in Indonesia how law enforcement officers in carrying out their duties can act firmly and still prioritize justice. And still prioritize effectiveness in carrying out their duties, by carrying out the following: *first*, paying attention to the legal structure.



*Second*, paying attention to the legal structure and *third*, not merely referring to the legal culture that exists in society. It is better in terms of maintaining the existence of the development of legal politics with the law enforcement system in Indonesia, that the role of legal politics should be more to maintain and prioritize the existence of factors, legal objectives and so forth related to law enforcement. So that later the existence of legal politics in the law enforcement system in Indonesia is not tarnished by things outside the legal objectives. Especially those arising from law enforcement which is often chaotic due to corruption, collusion and nepotism.

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