

# THE IMPACT OF POLITICAL LEGAL DEVELOPMENTS ON LAW ENFORCEMENT IN INDONESIA

**Ismaidar<sup>1</sup>, Anwar Ibrahim<sup>2</sup>**

<sup>1</sup>Lecturer at Master of Laws at Universitas Pembangunan Panca Budi, Medan

<sup>2</sup>Master of Law Student at Universitas Pembangunan Panca Budi, Medan

Correspondent Email: [ismaidar@dosen.pancabudi.ac.id](mailto:ismaidar@dosen.pancabudi.ac.id)

## ABSTRACT

Laws are guidelines and rules related to the concept of social life 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 the law can achieve justice. Related to this legal concept, legal politics is defined as activities that determine patterns and ways of forming laws, overseeing the operation of laws, and updating laws for the purposes 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 comply with legal rules. Law is viewed from the perspective of *das sollen* (necessity), viewing that law must be guided by the relationships between members of society. Meanwhile, those who view it from the point of view 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 today, legal autonomy in Indonesia is often intervened by politics, not only in terms of its creation, but also in its implementation, both in terms of law enforcement. This research aims to find out what is the impact of legal political developments on law enforcement in Indonesia? How does legal politics exist in law enforcement in Indonesia? The method used in research is normative juridical.

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

## A. INTRODUCTION

Law will be used as a tool used to achieve State goals. As is known, law is guidance and rules related to the concept of social life and will always be in accordance with the conditions of society. Therefore, ideally laws are made with justice in mind. Justice will be realized if the political activities that give birth to 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 just legal supremacy. Law as an embodiment of values means that its presence is to protect and promote the values upheld by society. One of the critical discussions regarding law is the demand to provide justice, meaning that the law is always faced with the question of whether the law can achieve justice.

Related to this legal conception, legal politics is defined as activities that determine patterns and ways of forming laws, overseeing the operation of laws, and updating laws for the purposes of the State. As stated by Soedarto, legal politics is a policy of the State through the State bodies which are authorized to establish the desired regulations, which are expected to be used to express what is contained in society. 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. Politics uses all means to achieve both legal and illegal goals. It is also said that politics is the determinant of law, because law is the result of the crystallization of political wills that interact with each other and even compete with each other.

So in interpreting whether the law influences politics or politics influences the law. This depends on the point of view used by the experts. Where, there are those who view it from the perspective of *das sollen* (necessity), viewing that the law must be guided by the relationships between members of society. Meanwhile, those who view it from the point of view 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. Thus the answer to this question is very relative, depending on which perspective one sees it from. So that law is influenced by

politics and even today, legal autonomy in Indonesia is often intervened by politics, not only in terms of its creation, but also in its implementation, both in terms of law enforcement. Sri Soemantri once described the relationship between law and politics in Indonesia as being like the journey of a train locomotive that derails. If law is likened to a rail and politics is likened to a locomotive, then it is often seen that the locomotive has gone off the rails it is supposed to travel on. Of course, this is in direct contrast to the legal concept which should focus on justice in playing a role in society.

## B. FORMULATION OF THE PROBLEM

1. What is the Impact of Legal Political Developments on Law Enforcement in Indonesia?
2. How does legal politics exist in law enforcement in Indonesia?

## C. RESEARCH METHODS

The type of research used in this research is normative legal research methods or library legal research. namely legal research carried out by examining library materials, namely primary and secondary data. These legal materials are arranged systematically to make it easier to draw conclusions from the problems studied. In approaching this problem using the Normative Juridical approach method. This approach is an approach to applicable legislation. The statutory approach is carried out by reviewing all laws and regulations that are related to the content of the law being handled. The normative juridical problem approach is an approach used to approach statutory regulations (statue approach), this approach examines statutory regulations related to the problem being studied. Apart from that, a conceptual approach is also used to look at legal concepts related to existing problems.

## D. DISCUSSION

### 1. The Impact of Legal Political Developments on Law Enforcement in Indonesia

Politics is understood as a set of meanings or values and choices taken by society to justify the functioning of the 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 explained that politics is an issue related to the various differences in life between leaders and the people whose orientation is directed at improving power. Politics is also related to grounding moral ideals and teachings, as a coercive institution for implementing moral orders and teachings. Values in politics as a frame of reference for the functioning of religious values in the social order. Values in politics cannot be separated from ideology which is the source of values and ideals which are actualized through political institutions or certain group organizations. In legal science, matters regarding politics are better known as legal politics. Legal politics is the basic policy of state policy administrators in the field of law that will, is and has been in force, which originates from the values that apply in society to achieve the state's aspired goals. The legal politics of one country are different from other countries, this is in accordance with the historical background, outlook on life, social culture and political will of each country.

In a modern legal state, the person who can sanction violations of legal rules is the ruler. Because law enforcement is the monopoly of the authorities. The authorities have the power to impose sanctions for violations of legal rules. It is often said that law exists because of legitimate power. In history, we have found laws that do not originate from legitimate power or power that, according to the applicable law, is actually not authorized. In essence, law is power, but power seeks order, not the other way around law being used as a means of seizing 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 pursued in accordance with human relations through specific means by avoiding unnecessary contradictions. If government is based on power, such government will tend to

increase tensions in the political field and socially will create a repressive situation. Meanwhile, if the government is based on law, such a government will tend to reduce tensions. For this reason, in order to prevent the occurrence of oppressive power structures, a legal system has been developed that balances power by distributing rights and privileges between individuals and groups.

Law is a very complex entity, covering multiple societal realities, encompassing many aspects, dimensions and phases. The formation of law through laws aims to positively protect human rights which is the essence of the rule of law. This protection certainly requires a control mechanism as part of the legal interests of society. Both social control, juridical control and political control. Through law, these interests are integrated so that the protection of people's subjective rights is not reduced. Legal interests are carried out by providing the widest possible access for the community 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 measurable manner. Determine its breadth and depth. That power is called 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 thoughts above, it is imperative for the state when formulating provisions in legislation to always pay attention to aspects of legal certainty and protection of citizens' rights. Because if law and power are not controlled, it will have an impact on all related aspects of law, it is possible that in terms of law enforcement, various interests will emerge from the authorities to act inappropriately in terms of law enforcement. This will lead to inequality and injustice in the law enforcement system. Therefore, the impact of legal politics in the law enforcement system in Indonesia is still heavily influenced by interference and the interests of political elites. Where, they arbitrarily use their power to get out of the trap of the law, of course this is also a lesson for law enforcers so that in the future they will not be influenced and not be lulled by whispers that invite abuse of the law, especially related to law enforcement.

## 2. The Existence of Legal Politics in Law Enforcement in Indonesia

Humans as social creatures can only realize their lives in togetherness with other people by ensuring a shared life and providing a place for individuals and groups to defend themselves and fulfill their life needs in order to achieve common goals. For this reason, it is necessary to have laws that regulate so that conflicts of interest can be prevented, and do not become open conflicts, which are resolved solely on the basis of the strengths or weaknesses of the parties involved. The effort to realize Pancasila as a source of values is to make basic values a source for drafting legal norms in Indonesia. The operationalization of the basic values of Pancasila is to make Pancasila the basic norm for drafting legal norms in Indonesia. Indonesia has national law which is a unified legal system. Where Pancasila is located as a grundnorm (basic norm) or staatfundamentálnorm (fundamental norm of the State) at the level of legal norms in Indonesia.

Legal politics is one of the policies taken or implemented by the State through State institutions or officials who are given the authority to determine which laws need to be regulated, so that with this policy the administration of the State and government can run well and in an orderly manner so that the State's goals can gradually be planned and materialized. Legal politics also originates from national law, where with the link 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, as is the idea of law and power (Right and Might) put forward by Hans Kelsen in the Dynamic Legal Concept related to Legal Order: "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 illustrates that legal and power thinking, however, cannot be equated. Because the two of them 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, what is synonymous with influence from 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 refers to the purpose of the law itself. When law enforcement officers know the purpose of the law, then apply it in resolving cases, then violations and the interests of other parties will most likely be avoided, considering that the purpose of the law is basically as a means of upholding justice. The legal objectives are as follows:

- a. Ethical Theory, the purpose of law is to enforce,
- b. Utility Theory, the purpose of law is to realize what is beneficial or useful for other people;
- c. Protection Theory, the purpose of law is to provide protection or to protect society, in other words, to protect humans in the sense of being active (creating safe conditions in society) and passive (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 aim of law is to provide justice, certainty and benefit. The 1945 Constitution also reflects several noble ideals of the Indonesian nation contained in Pancasila. This noble goal can be realized if it is 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 lofty goals are often tarnished by acts of abuse of power and authority by state administrators, thus triggering the proliferation of practices of collusion, corruption and nepotism (KKN) or in other words the existence of political interests in the life of the nation and state. Apart from that, the community has not yet fully participated in carrying out the function of effective social control over the administration of the State, so that the opportunities for corruption in the administration of the State are wide open.

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

- d. The law itself is limited to the law only
- e. Law enforcers, namely parties who form and implement the law;
- f. Facilities or facilities that support law enforcement;
- g. Society, namely the environment in which the law applies or is applied;
- h. Culture, namely the results of work, creativity and feelings that are based on human initiative in social life.

It is often heard that the law does not reflect the community's sense of justice, because law enforcers, especially judges, generally only want to create law enforcement or legal certainty by overriding or ignoring the sense of justice. The judge model above can damage the foundations and values of just law enforcement, therefore currently there is a great need for visionary and progressive judges to overcome the impasse of just law enforcement. On the one hand, the law must be upheld, but on the other hand, justice must also be upheld. Law enforcement is a bridge or gateway to achieving the goals of justice. If justice has been enforced without any public upheaval, then it can be ensured that law enforcement with justice has been realized, but if on the contrary it is not enforced with justice then law enforcement can be said to be false. Therefore, judges in deciding a justice case; It is hoped that they must be firm and professional by ignoring the political interests of political elite circles.

On the other hand, regarding the power of a judge in deciding cases, Hans Kelsen quotes the opinion expressed by Gray, namely: Gray himself says: "Is the power of the judge 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 in deciding cases that rests with judges is only limited to what has been granted by the State organization. Gray said, "the organization is determined by the will of the State authorities." Gray further explained that determining who is meant by a ruler is not easy. Because this condition is 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 regulatory provisions set by the State. Of course, this aims to avoid involvement from parties who are not competent or who have political interests. The existence of legal politics in Indonesia, to this day, still has many pros and cons among society, especially in terms of law enforcement. Law enforcement in Indonesia should be carried out with efforts to actually apply legal norms so that the law can function and be enforced as a guide to behavior in social and state life, both by individual citizens and law enforcement officers who have duties and authority based on 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". It is impossible for society to live without law, because legal norms are what regulate human life in society. In the future, to be able to realize effective law enforcement, the following needs to be considered:

- a. Regarding legal structure: Internal reform of law enforcement agencies must be carried out consistently, professionally and sustainably. Efforts to reform the legal institutions of the judicial mafia must be carried out 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.
- b. Regarding legal substance: The preparation and formation of laws and the development of customary law must be in harmony with the needs of society, must be objective and not discriminate. A good legal system will force law enforcement officers to work honestly, effectively, efficiently and with quality.
- c. Regarding legal culture: public awareness of the law (including anti-corruption attitudes and character lessons) must be increased, and must even be taught from an early age within the family, including how a citizen has individual rights and obligations that must be carried out.

From the government's side there must be action that can create a society that obeys (submits) to the law and respects the law (law abiding society) not because of fear of law enforcers but because of self-awareness. The government should not only focus on forming laws, but forget about improving the legal culture of its people. In essence, to maintain the existence of legal politics in the enforcement system in Indonesia, openness from law enforcers is very necessary. Because politics and law often become bait in implementing the law enforcement system in Indonesia. Therefore, efforts often arise to distort legal politics in law enforcement. This means that the rules in the law enforcement system are just 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 carried out according to existing regulations.



## E. CLOSING

1. The impact of the development of legal politics in the law enforcement system in Indonesia is that with the continued development of legal politics in Indonesia, of course this will have implications in various aspects of life. Especially in terms of law enforcement in Indonesia. Because legal politics in the law enforcement system in Indonesia is still heavily influenced by interference and the interests of political elites. Where, they arbitrarily use their power to get out of the law, of course this is also a lesson for law enforcers so that in the future they will not be influenced and not be lulled by whispers that invite violations of the law, especially related to enforcement. .
2. The existence of legal politics in the law enforcement system in Indonesia is in law enforcement in Indonesia, how will law enforcement officers in carrying out their duties be able to act firmly and still prioritize justice. And continue to prioritize effectiveness in carrying out duties, by carrying out the following things: 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. So, related to the impact arising from the existence of legal politics in the law enforcement system in Indonesia, it is that often in carrying out law enforcement the role of legal politics is not implemented properly, where law enforcers actually prioritize the interests of the political elite. Therefore, it is best in terms of law enforcement that law enforcement officials should not give different treatment even if they are a holder of authority, because after all everyone has the same rights before the law. Law enforcement officials should not combine the interests of political elites to enforce the law. It would be best 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 to maintain and prioritize the factors, legal objectives and so on that are related to law enforcement.

## REFERENCES

### A. Buku:

- Mahfud MD, Moh. Politik Hukum di Indonesia. Jakarta: Rajawali Pers. 2010. Rahardjo, Satjipto. Sosiologi Hukum. Yogyakarta: Genta Publishing. 2010.
- Manan, Abdul. Dinamika Politik Hukum di Indonesia. Jakarta: Kencana, 2018.
- Yanto, Oksidelfa . Mafia Hukum. Depok: Penebar Swadaya Grup.
- Sahetapy. J.E, Runtuhnya Etik Hukum. Jakarta: PT. Kompas Media Nusantara. 2009.
- Nasution, Mirza. Politik Hukum dalam Sistem Ketatanegaraan Indonesia. Medan: Puspantara. 2015.
- Arinanto. Satya, Politik Hukum Jakarta: Program Pascasarjana Fakultas Hukum Univ. Indonesia. 2018.
- Prosiding Kongres Pancasila IV Strategi Pelembagaan Nilai-nilai Pancasila dalam Menegakkan Konstitusionalitas Indonesia. Pidato Ketua MK, Moh. Mahfud MD.). Yogyakarta: PSP UGM. 2012.
- Syamsuddin. Amir, Integritas Penegak Hukum Hakim, Jaksa, Polisi, dan Pengacara. Jakarta: PT. Kompas Media Nusantara. 2008.
- Soerjowinoto. Petrus, Ilmu Hukum Suatu Pengantar. Surabaya: CV. Garuda Mas Sejahtera. 2018. Marzuki, Peter Mahmud. Pengantar Ilmu Hukum. Jakarta: Kencana. 2017.
- Manan, Abdul, Politik Hukum Studi Perbandingan dalam Praktik Ketatanegaraan Islam dan Sistem Hukum Barat. Jakarta: Kencana. 2016.
- Rahman, Abd, Baso Madion. Politik Hukum Pertanahan. Makassar: Bosowa Publishing Group. Suadi, Amran, Mardi Candra. Politik Hukum: Perspektif Hukum Perdata dan Pidana Islam Serta Ekonomi Syariah. Jakarta: Kencana. 2016.
- Raharjo, Andri. Sistem Hukum Indonesia Ketentuan-ketentuan Hukum Indonesia dan Hubungannya dengan Hukum Internasional. Jakarta: Pustaka Yustisia. 2016.
- Waluyo, Bambang. Penegakan Hukum di Indonesia. Jakarta: Sinar Grafika Offset. 2016.

- Laurensius Arliman S. Penegakan Hukum dan Kesadaran Masyarakat. Yogyakarta: Deepublish. 2015.
- Gultom, Binsar M.. Pandangan Kritis Seorang Hakim dalam Penegakan Hukum di Indonesia. Jakarta: PT. Gramedia Pustaka Utama. 2012.

## B. Jurnal

- Anita Anita, POLITIK HUKUM DALAM PENEGAKAN HUKUM DI INDONESIA POLITIK HUKUM DALAM PENEGAKAN HUKUM DI INDONESIA, Volume 2 "Dharmasisya" Jurnal Fakultas Hukum Universitas Indonesia, Desember 2022.
- Widodo, Wahyu, Gunarto.,dkk, Politik Hukum. Semarang: Universitas PGRI Semarang Press. 2016. Artikel M. Husein Maruapey. "Penegakan Hukum dan Perlindungan Negara (Analisis Kritis Terhadap Kasus Penistaan Agama Oleh Patahana Gubernur DKI Jakarta)." Jurnal Ilmu Politik dan Komunikasi. Vol VII. No. 1. Juni 2017.
- Sanyoto. "Penegakan Hukum di Indonesia." Jurnal Dinamika Hukum. Vol. 8. No. 3. September 2008.
- M. Shohibul Itmam. "Hukum Islam dalam Pergumulan Politik Hukum Nasional Era Reformasi." AlTahrir. Vol. 13. No. 2. November 2013.
- Hafid Zakariya, Hernawan Santosa. et.al., "Pengaruh Hukum dan Politik terhadap Perkembangan Investasi Asing di Indonesia" Jurnal Serambi Hukum. Vol. 10. No. 02. Agustus 2016.
- Ucuk Agiyanto. "Penegakan Hukum di Indonesia: Eksplorasi Konsep Keadilan Berdimensi Ketuhanan." Hukum Ransendental Pengembangan dan Penegakan Hukum di Indonesia. Indri Astuti. "Politik Hukum Undang-undang Tindak Pidana Korupsi" Forum Ilmu Sosial. Vol. 41. No. 2. Desember 2014. Kartono. "Politik Hukum Judicial Review di Indonesia." Jurnal Dinamika Hukum. Vol. 11. Edisi Khusus Februari