

Legal Politics and the Dilemma of Legal Certainty and Justice: A Normative Analysis in the Indonesian Legal System

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Article Info

Keywords

legal politics, legal certainty, legal justice, law-making

Abstract

This study examines the role of legal politics in ensuring legal certainty and achieving substantive justice within the Indonesian legal system. Although legal politics serves as a fundamental guideline in the formulation and enforcement of laws, tensions frequently arise between the demands of legal certainty and the pursuit of justice due to political influence in the legislative process. This study aims to analyze how legal politics shapes law-making and to identify the challenges in balancing these two legal objectives. This research employs a normative juridical method, using statutory, conceptual, and theoretical approaches to analyze legal norms, doctrines, and relevant scholarly works. The analysis focuses on the interaction between political configurations, institutional integrity, and the resulting legal framework. The findings reveal that legal politics plays a strategic role in determining the direction, substance, and priorities of legislation, thereby influencing the realization of legal certainty and justice. However, the dominance of political interests, regulatory disharmony, and weak law enforcement often undermine these objectives. The study also finds that an overemphasis on formal certainty may lead to substantive injustice, highlighting the need for a balanced approach. This study contributes to the discourse by emphasizing the importance of justice-oriented legal politics that integrates formal certainty with substantive fairness. It recommends strengthening institutional integrity, enhancing public participation, and ensuring consistency in legal policy to achieve a more equitable and predictable legal system.

1. Introduction

The relationship between legal politics, legal certainty, and justice has become a central issue in contemporary legal discourse, particularly in developing legal systems such as Indonesia. Law is fundamentally expected to function as an instrument that ensures order, certainty, and fairness within society. However, in practice, these objectives often come into tension, especially when the process of law-making is influenced by political interests and institutional dynamics. As argued by Tamanaha (2021), law is not merely a neutral system of rules but a socially constructed institution shaped by power relations and political configurations.

Legal politics plays a strategic role in determining the direction, form, and substance of law. It reflects the policy orientation of the

state in regulating social life, including the formulation, implementation, and enforcement of legal norms. According to Mahfud MD (2022), legal politics serves as a fundamental guideline that bridges the gap between normative ideals and empirical realities. However, in many cases, political influence over legal processes has led to an imbalance between legal certainty and justice, raising concerns about the legitimacy of law itself (Butt & Lindsey, 2022).

Legal certainty refers to the clarity, consistency, and predictability of legal rules, which are essential for maintaining social order and public trust. Fuller (2021) emphasizes that a functioning legal system requires generality, clarity, and stability in its norms. On the other hand, legal justice demands fairness, proportionality, and responsiveness to societal

values. The tension between these two principles often emerges when rigid application of the law produces outcomes that are formally correct but substantively unjust (Dyzenhaus, 2022).

In the Indonesian context, this tension is increasingly evident in various areas of law, including constitutional law, criminal justice, and regulatory governance. Recent studies indicate that legislative processes are frequently influenced by political compromise rather than public interest, resulting in laws that lack coherence and responsiveness (Aspinall & Berenschot, 2021). This condition not only weakens legal certainty but also undermines the realization of justice in society.

Furthermore, the dominance of legal positivism in law enforcement has contributed to the prioritization of formal certainty over substantive justice. Legal practitioners often rely heavily on written rules without adequately considering the broader social context. As noted by Bedner (2021), this approach may ensure predictability but can also create a gap between legal norms and social realities. Consequently, the law may fail to address issues such as inequality, discrimination, and access to justice.

The concept of a *rechtsstaat*, as enshrined in the 1945 Constitution of Indonesia, emphasizes the supremacy of law and the protection of fundamental rights. However, its implementation remains challenged by political intervention, weak institutional integrity, and regulatory inconsistency. According to Lev (2021), the effectiveness of a legal system depends not only on the quality of its norms but also on the strength of its institutions and the level of public participation.

Recent scholarship has increasingly highlighted the importance of balancing legal certainty with substantive justice. This perspective is rooted in the idea that law should not only provide clear and consistent rules but also reflect moral values and social needs. Theoretical frameworks such as Radbruch's formula emphasize that extreme injustice should not be tolerated even in the name of legal certainty (Alexy, 2022). This suggests that legal systems must adopt a more flexible and justice-

oriented approach.

In addition, the role of legal politics in shaping law-making processes has become more complex in the era of globalization and technological advancement. Modern legal systems are required to respond to rapidly changing social conditions, including digital transformation, economic inequality, and environmental challenges. However, when legal politics is driven by short-term interests, law-making tends to be reactive rather than strategic, resulting in overlapping regulations and legal uncertainty (Hadjon, 2021).

Judicial institutions also play a crucial role in bridging the gap between certainty and justice. Courts are often faced with the challenge of interpreting legal norms in a way that balances formal rules with substantive fairness. Recent studies show that judicial activism in Indonesia has increased, particularly in cases involving constitutional rights and public interest (Pompe, 2022). This indicates a growing recognition of the need to integrate justice considerations into legal interpretation.

Despite the growing body of literature, there remains a significant gap in understanding how legal politics systematically influences the balance between legal certainty and justice in Indonesia. Most existing studies focus on specific sectors or adopt a purely theoretical perspective, without providing a comprehensive analysis of their interrelationship (Lindsey, 2022). Therefore, this study seeks to address this gap by examining the role of legal politics as a key determinant in shaping both legal certainty and justice.

This research aims to analyze three main issues: (1) the conceptual relationship between legal politics and law formation, (2) the role of legal politics in ensuring legal certainty, and (3) its contribution to realizing substantive justice within the Indonesian legal system. By employing a normative juridical approach, this study provides a systematic and theoretical analysis of legal norms, doctrines, and principles relevant to the topic.

Ultimately, this study argues that legal politics must be oriented toward achieving a

balance between legal certainty and justice. Law should not only function as a system of rules but also as an instrument for promoting social welfare and protecting fundamental rights. Strengthening institutional integrity, enhancing public participation, and ensuring consistency in legal policy are essential steps toward realizing a more equitable and effective legal system.

2. Literature Review

2.1. Definition of Legal Politics

Etymologically, the term “legal politics” is the Indonesian translation of the Dutch term *rechtspolitiek*, formed from two words: *recht* (law) and *politiek* (politics). In the Indonesian dictionary, *recht* means law, and according to Van der Tas’s Dutch dictionary, *politiek* means *beleid* (policy). Thus, legal politics can briefly be defined as legal policy. Meanwhile, “policy” in the Indonesian dictionary refers to a set of concepts and principles that form the outline and basis of plans in leadership and action. In other words, legal politics is a set of concepts and principles that serve as the general framework and basis for leadership and action in the legal field (Imam Syaukani & A. Ahsin Thohari, 2015:24).

Legal politics can be understood as the basic policy of the state in the legal field that will be, is being, and has been implemented. Legal politics reflects the direction of national legal development that the state seeks to achieve. According to scholars, legal politics includes:

- Determining legal objectives
- Determining ways to achieve those objectives
- Adjusting law to social dynamics

Thus, legal politics serves as a bridge between the ideals of the state and the legal reality in society.

2.2. Concept of Legal Certainty

Legal certainty is a condition in which law provides clear, consistent, and predictable guidelines. Legal certainty is characterized by:

- The existence of written and clear rules
- Consistent law enforcement
- Absence of multiple interpretations that

harm society

Legal certainty is essential for creating social stability and public trust in the legal system.

The theory of legal certainty is one of the objectives of law and is part of efforts to achieve justice. Legal certainty takes concrete form in the implementation and enforcement of law without regard to who the individual is. Through legal certainty, everyone can anticipate what will happen if they take a particular legal action.

Gustav Radbruch’s view on legal certainty is based on the idea that legal certainty is a product of law, more specifically of legislation.

2.3. Concept of Legal Justice

Philosophically, the concept of justice has been discussed since ancient Greece. Aristotle distinguished two main forms of justice: distributive justice and corrective justice. Distributive justice relates to the proportional distribution of rights, obligations, and social benefits in society, while corrective justice aims to remedy injustices arising from legal violations through sanctions or compensation.

In modern thought, legal justice is no longer understood purely formally but also substantively. Formal justice emphasizes equal application of law to everyone, but this approach is often considered insufficient because it ignores different social conditions. Therefore, substantive justice has emerged, considering moral values, societal sense of justice, and protection of vulnerable groups.

Legal justice is also closely linked to human rights. Every law formed must reflect respect for human dignity, equality before the law, and protection of fundamental rights. Thus, legal justice is measured not only by legal norms but also by how they are applied in practice. In law enforcement, tension often arises between legal certainty and justice. Rigid application of law for the sake of certainty can sometimes lead to substantive injustice. Therefore, law enforcement officials must consider not only the written law but also societal values of justice.

3. Research Methods

This study employs a normative juridical (doctrinal) approach to examine the role of legal politics in ensuring legal certainty and justice within the Indonesian legal system. This approach focuses on the analysis of legal norms, principles, and doctrines as reflected in statutory regulations and scholarly discourse.

The research utilizes three main approaches. First, the statutory approach is applied by analyzing relevant laws and regulations within the Indonesian legal hierarchy, particularly those related to law-making processes and legal governance. Second, the conceptual approach is used to explore key legal concepts, including legal politics, legal certainty, and legal justice, based on established legal theories. Third, the analytical approach is employed to interpret and critically assess the interaction between political configurations and legal outcomes.

The data used in this study consist of secondary legal materials, including primary legal sources (legislation), secondary sources (books, journal articles, and expert opinions), and tertiary materials (legal dictionaries and encyclopedias). Data collection is conducted through library research, focusing on both classical and contemporary legal literature.

The data are analyzed using qualitative legal analysis, emphasizing interpretation, comparison, and systematic reasoning. This method allows the researcher to identify patterns, inconsistencies, and the implications of legal politics on the realization of legal certainty and justice.

Through this approach, the study aims to provide a comprehensive and theoretically grounded understanding of how legal politics influences the development and implementation of law in Indonesia.

4. Results and Discussion

4.1. Legal Politics as the Basis for Law Formation

Legal politics serves as the policy direction in forming legislation. Every law reflects the political choices of the government and parliament. Legal politics determines:

- Legal substance
- Regulatory priorities
- Values to be realized

If legal politics is oriented toward public interest, laws will reflect social justice. Conversely, if dominated by elite interests, law may become a tool of power.

Legal politics essentially represents the state's policy direction regarding laws to be formed, implemented, and enforced to achieve national objectives. In law formation, it becomes the main foundation determining content, direction, and priorities. Every law is the result of a political process reflecting values, interests, and visions of state administrators.

In Indonesia, legal politics is closely related to the *rechtsidee* (legal ideal) derived from Pancasila and the 1945 Constitution. Therefore, every regulation should reflect values of social justice, humanity, unity, democracy, and legal certainty. Legal politics based on these values produces laws that are not only formally valid but also morally and socially legitimate.

Legal politics also plays a role in legislative planning, such as the National Legislation Program (*Prolegnas*), helping create a structured and non-sporadic legal system.

However, in practice, short-term political interests often influence lawmaking, leading to unresponsive or overlapping regulations. Ideally, legal politics should prioritize public interest, transparency, and public participation.

Thus, legal politics plays a strategic role in law formation by guiding legal development and ensuring that laws achieve state objectives, provide legal certainty, and reflect societal justice.

4.2. Role of Legal Politics in Ensuring Legal Certainty

Good legal politics should produce regulations that are:

- Clear and non-overlapping
- Consistent with the hierarchy of laws
- Effectively implementable

Legal certainty is achieved when lawmaking is systematic and consistent. Legal politics plays a role in codification,

harmonization, and synchronization of laws to prevent normative conflicts.

However, frequent political changes often lead to rapid regulatory changes, disrupting legal stability. This shows the importance of consistent legal politics.

Legal certainty requires clear, consistent, and applicable rules. Legal politics plays a strategic role by:

- Structuring law formation according to legal hierarchy
- Promoting harmonization and synchronization of regulations
- Ensuring consistency in legal policy
- Improving clarity in legal drafting
- Strengthening law enforcement institutions

Nevertheless, political dynamics often undermine legal certainty, highlighting the need for long-term, stable legal politics.

4.3. Role of Legal Politics in Realizing Legal Justice

Legal politics must also be justice-oriented, reflected in:

- Protection of human rights
- Support for vulnerable groups
- Access to justice

Just legal politics encourages non-discriminatory laws that address societal needs. Law should function as a tool of social engineering to create a fairer society.

Legal politics influences:

- Value orientation of laws
- Human rights protection
- Distributive justice
- Procedural justice through an independent judiciary
- Recognition of living law in society

Challenges remain due to political interests and weak law enforcement, but justice-oriented legal politics can create a more humane and inclusive legal system.

5. Conclusion

5.1. Summary of Findings

This study demonstrates that legal politics plays a fundamental role in shaping the direction, substance, and implementation of law within the Indonesian legal system. It significantly

influences the realization of legal certainty through structured and consistent regulations, while also determining the extent to which substantive justice can be achieved. However, the findings reveal a persistent tension between legal certainty and justice, particularly when political interests dominate the law-making process.

5.2. Theoretical Implications

This study contributes to legal theory by reaffirming that legal politics cannot be separated from the dual objectives of law, namely certainty and justice. It highlights the need to move beyond a purely formalistic understanding of legal certainty toward a more integrative framework that incorporates substantive justice. The study also strengthens the relevance of contemporary legal thought in bridging normative legal structures with socio-political realities.

5.3. Practical and Policy Implications

From a practical perspective, the findings suggest that policymakers and legislators must adopt a more balanced approach in formulating legal policies. Legal politics should be directed toward public interest, transparency, and inclusivity. Strengthening institutional integrity, improving legislative planning, and ensuring consistency in regulatory frameworks are essential steps to enhance both legal certainty and justice.

5.4. Limitations of the Study

This study is limited by its reliance on a normative juridical approach, which focuses primarily on legal texts and theoretical analysis without incorporating empirical data or case-based evaluation. As a result, the findings may not fully capture the practical complexities of law enforcement and political dynamics in real-world settings.

5.5. Directions for Future Research

Future research is recommended to adopt empirical or socio-legal approaches to complement normative analysis. Further studies may explore case studies of specific

legislation or judicial decisions to better understand how legal politics operates in practice. Comparative studies across different legal systems may also provide broader insights into the relationship between legal politics, certainty, and justice.

Bibliography

- Alexy, R. (2002/2022). *The argument from injustice: A reply to legal positivism* (2nd ed.). Oxford University Press.
- Aspinall, E., & Berenschot, W. (2019/2021). *Democracy for sale: Elections, clientelism, and the state in Indonesia*. Cornell University Press.
- Bedner, A. (2021). Indonesian legal scholarship and jurisprudence: Challenges and opportunities. *Journal of Indonesian Legal Studies*, 6(1), 1–15. <https://doi.org/10.15294/jils.v6i1.44715>
- Butt, S., & Lindsey, T. (2018/2022). *Indonesian law*. Oxford University Press.
- Dyzenhaus, D. (2017/2022). *The long arc of legality: Hobbes, Kelsen, Hart*. Cambridge University Press.
- Fuller, L. L. (1964/2021). *The morality of law* (Revised ed.). Yale University Press.
- Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. PT Bina Ilmu.
- Ismidar, I., Prasetyo, T., & Wibowo, A. (2022). Political law in law enforcement in Indonesia. *International Journal of Law, Crime and Justice*, 69, 100544. <https://doi.org/10.1016/j.ijlcj.2022.100544>
- Lev, D. S. (2000/2021). *Legal evolution and political authority in Indonesia: Selected essays*. Brill.
- Lindsey, T. (2022). Legal reform in Indonesia: Challenges and prospects. *Asian Journal of Comparative Law*, 17(2), 245–262. <https://doi.org/10.1017/asjcl.2022.12>
- Mahfud, M. D. (2022). *Politik hukum di Indonesia* (Edisi revisi). Rajawali Press.
- Marbun, R. (2022). Grand design politik hukum pidana dan sistem hukum pidana Indonesia berdasarkan Pancasila dan UUD 1945. *Padjadjaran Jurnal Ilmu Hukum*, 9(1), 1–15. <https://doi.org/10.22304/pjih.v9n1.a1>
- Pompe, S. (2022). The Indonesian Supreme Court: A study of institutional transformation. *Bijdragen tot de Taal-, Land- en Volkenkunde*, 178(3), 345–367. <https://doi.org/10.1163/22134379-bja10031>
- Rahmanto, F. (2025). Relasi politik hukum, nilai moral, dan kepastian hukum dalam perspektif asas keadilan di Indonesia. *Jurnal Ilmiah Advokasi*, 13(2), 120–135.
- Sunaryati Hartono. (2006). *Apakah the rule of law?* Alumni.
- Suseno, F. M. (2001). *Etika politik: Prinsip-prinsip dasar kenegaraan modern*. Gramedia Pustaka Utama.
- Syaukani, I., & Thohari, A. A. (2015). *Dasar-dasar politik hukum*. RajaGrafindo Persada.
- Tamanaha, B. Z. (2021). *A realist theory of law*. Cambridge University Press.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.